Supplemento ordinario alla "Gazzetta Ufficiale" n. 185 del 9 agosto 2016 - Serie generale

Spediz. abb. post. - art. 1, comma 1
Legge 27-02-2004, n. 46 - Filiale di Roma

PARTE PRIMA **Roma - Martedì, 9 agosto 2016** SI PUBBLICA TUTTI I GIORNI NON FESTIVI

DIREZIONE E REDAZIONE PRESSO IL MINISTERO DELLA GIUSTIZIA - UFFICIO PUBBLICAZIONE LEGGI E DECRETI - VIA ARENULA, 70 - 00186 ROMA
AMMINISTRAZIONE PRESSO L'ISTITUTO POLIGRAFICO E ZECCA DELLO STATO - VIA SALARIA, 691 - 00138 ROMA - CENTRALINO 06-85081 - LIBRERIA DELLO STATO
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N. 31/L

LEGGE 28 luglio 2016, n. **153.**

Norme per il contrasto al terrorismo, nonché ratifica ed esecuzione: a) della Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatta a Varsavia il 16 maggio 2005; b) della Convenzione internazionale per la soppressione di atti di terrorismo nucleare, fatta a New York il 14 settembre 2005; c) del Protocollo di Emendamento alla Convenzione europea per la repressione del terrorismo, fatto a Strasburgo il 15 maggio 2003; d) della Convenzione del Consiglio d'Europa sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato e sul finanziamento del terrorismo, fatta a Varsavia il 16 maggio 2005; e) del Protocollo addizionale alla Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatto a Riga il 22 ottobre 2015.

SOMMARIO

LEGGI ED ALTRI ATTI NORMATIVI

LEGGE 28 luglio 2016, n. **153**.

Norme per il contrasto al terrorismo, nonché ratifica ed esecuzione: *a)* della Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatta a Varsavia il 16 maggio 2005; *b)* della Convenzione internazionale per la soppressione di atti di terrorismo nucleare, fatta a New York il 14 settembre 2005; *c)* del Protocollo di Emendamento alla Convenzione europea per la repressione del terrorismo, fatto a Strasburgo il 15 maggio 2003; *d)* della Convenzione del Consiglio d'Europa sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato e sul finanziamento del terrorismo, fatta a Varsavia il 16 maggio 2005; *e)* del Protocollo addizionale alla Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatto a Riga il 22 ottobre 2015.

La Camera dei deputati ed il Senato della Repubblica hanno approvato;

IL PRESIDENTE DELLA REPUBBLICA

Promulga

la seguente legge:

Art. 1.

Autorizzazione alla ratifica

1. Il Presidente della Repubblica è autorizzato a ratificare:

a) la Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatta a Varsavia il 16 maggio 2005;

b) la Convenzione internazionale per la soppressione di atti di terrorismo nucleare, fatta a New York il 14 settembre 2005;

c) il Protocollo di Emendamento alla Convenzione europea per la repressione del terrorismo, fatto a Strasburgo il 15 maggio 2003;

d) la Convenzione del Consiglio d'Europa sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato e sul finanziamento del terrorismo, fatta a Varsavia il 16 maggio 2005;

e) il Protocollo addizionale alla Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatto a Riga il 22 ottobre 2015.

Art. 2.

Ordine di esecuzione

1. Piena ed intera esecuzione è data alla Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatta a Varsavia il 16 maggio 2005, alla Convenzione internazionale per la soppressione di atti di terrorismo nucleare, fatta a New York il 14 settembre 2005, al Protocollo di Emendamento alla Convenzione europea per la repressione del terrorismo, fatto a Strasburgo il 15 maggio 2003, alla Convenzione del Consiglio d'Europa sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato e sul finanziamento del terrorismo, fatta a Varsavia il 16 maggio 2005, e al Protocollo addizionale alla Convenzione del Consiglio d'Europa per la prevenzione del terrorismo, fatto a Riga il 22 ottobre 2015.

Art. 3.

Definizioni

1. Ai fini della presente legge, si intendono:

a) per «materia radioattiva»: le materie nucleari e altre sostanze radioattive contenenti nuclidi che sono caratterizzati da disintegrazione spontanea, con contestuale emissione di uno o più tipi di radiazione ionizzante come particelle alfa, beta, neutroni o raggi gamma, e che, per le loro proprietà radiologiche o fissili, possono causare la morte, gravi lesioni alle persone o danni rilevanti a beni o all'ambiente;

b) per «materie nucleari»: il plutonio, eccetto quello con una concentrazione isotopica superiore all'80 per cento nel plutonio 238, l'uranio 233, l'uranio arricchito negli isotopi 235 o 233, l'uranio contenente una miscela di isotopi come si manifesta in natura in forma diversa da quella di minerale o residuo di minerale, ovvero ogni materiale contenente una o più delle suddette categorie;

c) per «uranio arricchito negli isotopi 235 o 233»: l'uranio contenente l'isotopo 235 o 233 o entrambi in una quantità tale che il rapporto di quantità della somma di questi isotopi con l'isotopo 238 è maggiore del rapporto dell'isotopo 235 rispetto all'isotopo 238 che si manifesta in natura;

d) per «impianto nucleare»:

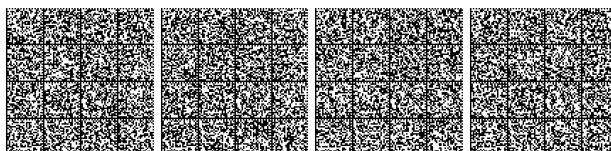
1) ogni reattore nucleare, inclusi i reattori installati in natanti, veicoli, aeromobili od oggetti spaziali da utilizzare come fonte di energia per la propulsione di tali natanti, veicoli, aeromobili od oggetti spaziali ovvero per ogni altro scopo;

2) ogni impianto o mezzo di trasporto utilizzato per la produzione, l'immagazzinamento, il trattamento o il trasporto di materia radioattiva;

e) per «ordigno nucleare»:

1) ogni congegno esplosivo nucleare;

2) ogni dispositivo a dispersione di materia radioattiva od ogni ordigno a emissione di radiazioni che, in ragione delle sue proprietà radiologiche, causa la morte, gravi lesioni personali o danni sostanziali a beni o all'ambiente;

f) per «ISIN»: l'Ispettorato nazionale per la sicurezza nucleare e la radioprotezione, di cui all'articolo 6 del decreto legislativo 4 marzo 2014, n. 45.

Art. 4.

Modifiche al codice penale

1. Al codice penale sono apportate le seguenti modificazioni:

a) dopo l'articolo 270-*quinquies* sono inseriti i seguenti:

«Art. 270-*quinquies*.1 *(Finanziamento di condotte con finalità di terrorismo)*. — Chiunque, al di fuori dei casi di cui agli articoli 270-*bis* e 270-*quater*.1, raccoglie, eroga o mette a disposizione beni o denaro, in qualunque modo realizzati, destinati a essere in tutto o in parte utilizzati per il compimento delle condotte con finalità di terrorismo di cui all'articolo 270-*sexies* è punito con la reclusione da sette a quindici anni, indipendentemente dall'effettivo utilizzo dei fondi per la commissione delle citate condotte.

Chiunque deposita o custodisce i beni o il denaro indicati al primo comma è punito con la reclusione da cinque a dieci anni.

Art. 270-*quinquies*.2 *(Sottrazione di beni o denaro sottoposti a sequestro)*. — Chiunque sottrae, distrugge, disperde, sopprime o deteriora beni o denaro, sottoposti a sequestro per prevenire il finanziamento delle condotte con finalità di terrorismo di cui all'articolo 270-*sexies*, è punito con la reclusione da due a sei anni e con la multa da euro 3.000 a euro 15.000»;

b) dopo l'articolo 270-*sexies* è inserito il seguente:

«Art. 270-*septies (Confisca)*. — Nel caso di condanna o di applicazione della pena ai sensi dell'articolo 444 del codice di procedura penale per taluno dei delitti commessi con finalità di terrorismo di cui all'articolo 270-*sexies* è sempre disposta la confisca delle cose che servirono o furono destinate a commettere il reato e delle cose che ne costituiscono il prezzo, il prodotto o il profitto, salvo che appartengano a persona estranea al reato, ovvero, quando essa non è possibile, la confisca di beni, di cui il reo ha la disponibilità, per un valore corrispondente a tale prezzo, prodotto o profitto»;

c) dopo l'articolo 280-*bis* è inserito il seguente:

«Art. 280-*ter*. *(Atti di terrorismo nucleare)*. — È punito con la reclusione non inferiore ad anni quindici chiunque, con le finalità di terrorismo di cui all'articolo 270-*sexies*:

1) procura a sé o ad altri materia radioattiva;

2) crea un ordigno nucleare o ne viene altrimenti in possesso.

È punito con la reclusione non inferiore ad anni venti chiunque, con le finalità di terrorismo di cui all'articolo 270-*sexies*:

1) utilizza materia radioattiva o un ordigno nucleare;

2) utilizza o danneggia un impianto nucleare in modo tale da rilasciare o con il concreto pericolo che rilasci materia radioattiva.

Le pene di cui al primo e al secondo comma si applicano altresì quando la condotta ivi descritta abbia ad oggetto materiali o aggressivi chimici o batteriologici».

Art. 5.

Modifica al decreto-legge 18 febbraio 2015, n. 7, convertito, con modificazioni, dalla legge 17 aprile 2015, n. 43

1. All'articolo 8, comma 2, lettera *a)*, del decreto-legge 18 febbraio 2015, n. 7, convertito, con modificazioni, dalla legge 17 aprile 2015, n. 43, dopo la parola: «270-*quinquies*,» è inserita la seguente: «270-*quinquies*.1,».

Art. 6.

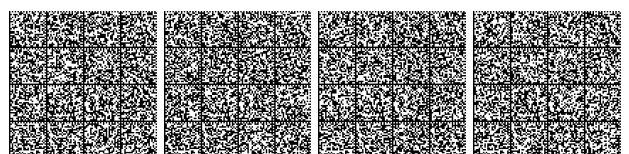
Punto di contatto ai sensi dell'articolo 7, paragrafo 4, della Convenzione internazionale per la soppressione di atti di terrorismo nucleare

1. Il punto di contatto responsabile della trasmissione e della ricezione delle informazioni di cui all'articolo 7, paragrafo 4, della Convenzione di cui all'articolo 1, comma 1, lettera *b)*, della presente legge è il Ministero della giustizia.

2. Quando procede in ordine a taluno dei reati di cui all'articolo 280-*ter* del codice penale, introdotto dall'articolo 4 della presente legge, il pubblico ministero comunica immediatamente al Ministro della giustizia l'avvenuto esercizio dell'azione penale.

3. Il pubblico ministero comunica altresì immediatamente al Ministro della giustizia l'avvenuta esecuzione di un provvedimento che applica la misura della custodia cautelare in carcere o gli arresti domiciliari nei confronti di persone indagate in ordine a taluno dei reati di cui all'articolo 280-*ter* del codice penale, introdotto dall'articolo 4 della presente legge, allegando copia del relativo provvedimento.

4. Nei procedimenti in ordine a taluno dei reati di cui articolo 280-*ter* del codice penale, introdotto dall'articolo 4 della presente legge, l'autorità giudiziaria procedente comunica immediatamente al Ministro della giustizia il passaggio in giudicato della sentenza ovvero il deposito del decreto di archiviazione, allegando copia del relativo provvedimento. Dà altresì immediata comunicazione al Ministro della giustizia del luogo dove i beni sono custoditi e delle modalità della loro conservazione, per le comunicazioni di cui all'articolo 18, paragrafo 6, della Convenzione di cui all'articolo 1, comma 1, lettera *b)*, della presente legge.

5. Nei casi previsti dai commi 2, 3 e 4, primo periodo, il Ministro della giustizia comunica senza ritardo l'esercizio dell'azione penale, l'esito del procedimento ovvero l'adozione della misura cautelare agli Stati parte della Convenzione di cui all'articolo 1, comma 1, lettera *b)*, interessati tramite il Segretario generale dell'Organizzazione delle Nazioni Unite. Nel caso di cui al comma 4, secondo periodo, il Ministro della giustizia informa senza ritardo il direttore generale dell'Agenzia internazionale per l'energia atomica.

Art. 7.

Provvedimenti conseguenti nel caso di sequestro e confisca ai sensi dell'articolo 18 della Convenzione internazionale per la soppressione di atti di terrorismo nucleare

1. L'autorità giudiziaria che dispone il sequestro di materia radioattiva o di un ordigno nucleare ovvero di un impianto nucleare, nei procedimenti relativi a taluno dei delitti di cui all'articolo 280-*ter* del codice penale, introdotto dall'articolo 4 della presente legge, ne dà immediata comunicazione al prefetto territorialmente competente, il quale, informati i Ministri dell'interno, dell'ambiente e della tutela del territorio e del mare e della salute e la Presidenza del Consiglio dei ministri - Dipartimento della protezione civile, su parere dell'ISIN, adotta i provvedimenti adeguati per la loro messa in sicurezza. In caso di urgenza il prefetto può comunque adottare i provvedimenti necessari.

2. I beni sequestrati o confiscati sono conferiti all'Operatore nazionale o al Servizio integrato di cui al decreto legislativo 6 febbraio 2007, n. 52, che provvede a gestirli sulla base delle indicazioni operative fornite dall'ISIN.

3. Nei casi in cui i beni mobili di cui al comma 1 devono essere restituiti a uno Stato parte della Convenzione di cui all'articolo 1, comma 1, lettera *b)*, il Ministro dello sviluppo economico, sentito l'ISIN, vi provvede di concerto con i Ministri dell'interno, della giustizia e dell'ambiente e della tutela del territorio e del mare, stipulando, se del caso, specifici accordi.

Art. 8.

*Introduzione dell'articolo 156-*bis *del decreto legislativo 17 marzo 1995, n. 230*

1. Dopo l'articolo 156 del decreto legislativo 17 marzo 1995, n. 230, è inserito il seguente:

«Art. 156-*bis (Specifiche disposizioni per particolari sostanze radioattive)*. — 1. Fermo restando quanto disposto dall'articolo 5 della legge 28 aprile 2015, n. 58, con decreto del Ministro dello sviluppo economico, di concerto con i Ministri dell'interno, dell'ambiente e della tutela del territorio e del mare, della salute e delle infrastrutture e dei trasporti, su proposta dell'Ispettorato nazionale per la sicurezza nucleare e la radioprotezione (ISIN), anche ai fini della prevenzione di atti di terrorismo nucleare, sono stabilite le sostanze radioattive e le opportune misure di protezione delle stesse, da adottare nelle pratiche comportanti l'impiego di dette sostanze, tenendo conto delle raccomandazioni formulate dall'Agenzia internazionale per l'energia atomica».

2. Il decreto di cui all'articolo 156-*bis* del decreto legislativo 17 marzo 1995, n. 230, introdotto dal comma 1 del presente articolo, è emanato entro centottanta giorni dalla data di entrata in vigore della presente legge.

Art. 9.

Autorità previste dalla Convenzione del Consiglio d'Europa sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato e sul finanziamento del terrorismo, nonché dal Protocollo addizionale alla Convenzione del Consiglio d'Europa per la prevenzione del terrorismo

1. Per Autorità di *intelligence* finanziaria ai sensi dell'articolo 12 della Convenzione di cui all'articolo 1, comma 1, lettera *d)*, della presente legge si intende l'Unità di informazione finanziaria istituita dall'articolo 6 del decreto legislativo 21 novembre 2007, n. 231, e successive modificazioni.

2. Per Autorità centrale ai sensi dell'articolo 33 della Convenzione di cui al comma 1 si intende il Ministero dell'economia e delle finanze.

3. Il punto di contatto responsabile della trasmissione e della ricezione delle informazioni ai sensi dell'articolo 7 del Protocollo di cui all'articolo 1, comma 1, lettera *e)*, è il Ministero dell'interno - Dipartimento della pubblica sicurezza. L'attività di cui al presente comma deve essere svolta con le risorse umane, strumentali e finanziarie disponibili a legislazione vigente.

Art. 10.

Clausola di invarianza finanziaria

1. Le amministrazioni pubbliche interessate provvedono all'attuazione delle disposizioni di cui alla presente legge con le risorse umane, strumentali e finanziarie disponibili a legislazione vigente, senza nuovi o maggiori oneri a carico della finanza pubblica. Alla copertura di eventuali spese straordinarie si provvede mediante appositi provvedimenti legislativi.

La presente legge, munita del sigillo dello Stato, sarà inserita nella Raccolta ufficiale degli atti normativi della Repubblica italiana. È fatto obbligo a chiunque spetti di osservarla e di farla osservare come legge dello Stato.

Data a Roma, addì 28 luglio 2016

MATTARELLA

RENZI, *Presidente del Consiglio dei ministri*

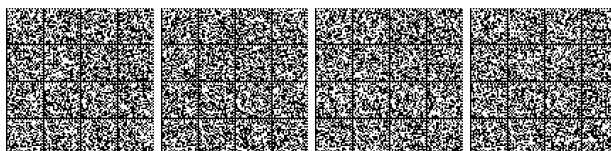
GENTILONI SILVERI, *Ministro degli affari esteri e della cooperazione internazionale*

ALFANO, *Ministro dell'interno*

ORLANDO, *Ministro della giustizia*

Visto, *il Guardasigilli:* ORLANDO

COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM

CONVENTION DU CONSEIL DE L'EUROPE POUR LA PRÉVENTION DU TERRORISME

Les Etats membres du Conseil de l'Europe et les autres Signataires;

Considérant que le but du Conseil de l'Europe est de réaliser une union plus étroite entre ses membres;

Reconnaissant l'intérêt d'intensifier la coopération avec les autres Parties à la présente Convention;

Souhaitant que des mesures efficaces soient prises pour prévenir le terrorisme et pour faire face, en particulier, à la provocation publique à commettre des infractions terroristes, ainsi qu'au recrutement et à l'entraînement pour le terrorisme;

Conscients de la grave inquiétude causée par la multiplication des infractions terroristes et par l'accroissement de la menace terroriste;

Conscients de la situation précaire à laquelle se trouvent confrontées les personnes du fait du terrorisme et réaffirmant, dans ce contexte, leur profonde solidarité avec les victimes du terrorisme et avec leurs familles;

Reconnaissant que les infractions terroristes ainsi que celles prévues par la présente Convention, quels que soient leurs auteurs, ne sont en aucun cas justifiables par des considérations de nature politique, philosophique, idéologique, raciale, ethnique, religieuse ou de toute autre nature similaire et rappelant l'obligation des Parties de prévenir de tels actes et, s'ils ne le sont pas, de les poursuivre et de s'assurer qu'ils sont punis par des peines qui tiennent compte de leur gravité;

Rappelant le besoin de renforcer la lutte contre le terrorisme et réaffirmant que toutes les mesures prises pour prévenir ou réprimer les infractions terroristes doivent respecter l'Etat de droit et les valeurs démocratiques, les droits de l'homme et les libertés fondamentales, ainsi que les autres dispositions du droit international, y compris le droit international humanitaire lorsqu'il est applicable;

Reconnaissant que la présente Convention ne porte pas atteinte aux principes établis concernant la liberté d'expression et la liberté d'association;

Rappelant que les actes de terrorisme, par leur nature ou leur contexte, visent à intimider gravement une population, ou à contraindre indûment un gouvernement ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque, ou à gravement déstabiliser ou détruire les structures fondamentales politiques, constitutionnelles, économiques ou sociales d'un pays ou d'une organisation internationale;

Sont convenus de ce qui suit:

Article 1 – Terminologie

1 Aux fins de la présente Convention, on entend par « infraction terroriste » l'une quelconque des infractions entrant dans le champ d'application et telles que définies dans l'un des traités énumérés en annexe.

2 En déposant son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, un Etat ou la Communauté européenne qui n'est pas partie à un traité énuméré dans l'annexe peut déclarer que, lorsque la présente Convention est appliquée à la Partie concernée, ledit traité est réputé ne pas figurer dans cette annexe. Cette déclaration devient caduque dès l'entrée en vigueur du traité pour la Partie ayant fait une telle déclaration, qui notifie au Secrétaire Général du Conseil de l'Europe cette entrée en vigueur.

Article 2 – Objectif

Le but de la présente Convention est d'améliorer les efforts des Parties dans la prévention du terrorisme et de ses effets négatifs sur la pleine jouissance des droits de l'homme et notamment du droit à la vie, à la fois par des mesures à prendre au niveau national et dans le cadre de la coopération internationale, en tenant compte des traités ou des accords bilatéraux et multilatéraux existants, applicables entre les Parties.

Article 3 – Politiques nationales de prévention

1 Chaque Partie prend des mesures appropriées, en particulier dans le domaine de la formation des autorités répressives et autres organes, ainsi que dans les domaines de l'éducation, de la culture, de l'information, des médias et de la sensibilisation du public, en vue de prévenir les infractions terroristes et leurs effets négatifs, tout en respectant les obligations relatives aux droits de l'homme lui incombant, telles qu'établies dans la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales, dans le Pacte international relatif aux droits civils et politiques, et d'autres obligations relatives au droit international, lorsqu'ils lui sont applicables.

2 Chaque Partie prend les mesures qui s'avèrent nécessaires pour améliorer et développer la coopération entre les autorités nationales en vue de prévenir les infractions terroristes et leurs effets négatifs, notamment:

a par l'échange d'informations;

b par le renforcement de la protection physique des personnes et des infrastructures;

c par l'amélioration des plans de formation et de coordination pour des situations de crise.

3 Chaque Partie promeut la tolérance en encourageant le dialogue interreligieux et transculturel, en impliquant, le cas échéant, des organisations non gouvernementales et d'autres acteurs de la société civile à participer, en vue de prévenir les tensions qui pourraient contribuer à la commission d'infractions terroristes.

4 Chaque Partie s'efforce de mieux sensibiliser le public à l'existence, aux causes à la gravité et à la menace que représentent les infractions terroristes et les infractions prévues par la présente Convention, et envisage d'encourager le public à fournir aux autorités compétentes une aide factuelle et spécifique, qui pourrait contribuer à la prévention des infractions terroristes et des infractions prévues par la présente Convention.

Article 4 – Coopération internationale en matière de prévention

Les Parties se prêtent assistance et soutien, le cas échéant et en tenant dûment compte de leurs possibilités, afin d'améliorer leur capacité à prévenir la commission des infractions terroristes, y compris par des échanges d'informations et de bonnes pratiques, ainsi que par la formation et par d'autres formes d'efforts conjoints à caractère préventif.

Article 5 – Provocation publique à commettre une infraction terroriste

1 Aux fins de la présente Convention, on entend par «provocation publique à commettre une infraction terroriste» la diffusion ou toute autre forme de mise à disposition du public d'un message, avec l'intention d'inciter à la commission d'une infraction terroriste, lorsqu'un tel comportement, qu'il préconise directement ou non la commission d'infractions terroristes, crée un danger qu'une ou plusieurs de ces infractions puissent être commises.

2 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale, conformément à son droit interne, la provocation publique à commettre une infraction terroriste telle que définie au paragraphe 1, lorsqu'elle est commise illégalement et intentionnellement.

Article 6 – Recrutement pour le terrorisme

1 Aux fins de la présente Convention, on entend par «recrutement pour le terrorisme» le fait de solliciter une autre personne pour commettre ou participer à la commission d'une infraction terroriste, ou pour se joindre à une association ou à un groupe afin de contribuer à la commission d'une ou plusieurs infractions terroristes par l'association ou le groupe.

2 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le recrutement pour le terrorisme, tel que défini au paragraphe 1 de cet article, lorsqu'il est commis illégalement et intentionnellement.

Article 7 – Entraînement pour le terrorisme

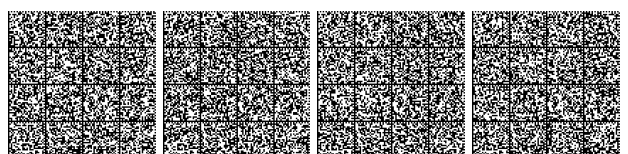
1 Aux fins de la présente Convention, on entend par «entraînement pour le terrorisme» le fait de donner des instructions pour la fabrication ou l'utilisation d'explosifs, d'armes à feu ou d'autres armes ou substances nocives ou dangereuses, ou pour d'autres méthodes et techniques spécifiques en vue de commettre une infraction terroriste ou de contribuer à sa commission, sachant que la formation dispensée a pour but de servir à la réalisation d'un tel objectif.

2 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale, conformément à son droit interne, l'entraînement pour le terrorisme, tel que défini au paragraphe 1 de cet article, lorsqu'il est commis illégalement et intentionnellement.

Article 8 – Indifférence du résultat

Pour qu'un acte constitue une infraction au sens des articles 5 à 7 de la présente Convention, il n'est pas nécessaire que l'infraction terroriste soit effectivement commise.

Article 9 – Infractions accessoires

1 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale dans son droit interne:

a la participation en tant que complice à une infraction au sens des articles 5 à 7 de la présente Convention;

b l'organisation de la commission d'une infraction au sens des articles 5 à 7 de la présente Convention ou le fait de donner l'ordre à d'autres personnes de la commettre;

c la contribution à la commission d'une ou plusieurs des infractions visées aux articles 5 à 7 de la présente Convention par un groupe de personnes agissant de concert. Ce concours doit être délibéré et doit :

i soit viser à faciliter l'activité criminelle du groupe ou en servir le but, lorsque cette activité ou ce but supposent la commission d'une infraction au sens des articles 5 à 7 de la présente Convention;

ii soit être apporté en sachant que le groupe a l'intention de commettre une infraction au sens des articles 5 à 7 de la présente Convention.

2 Chaque Partie adopte également les mesures qui s'avèrent nécessaires pour ériger en infraction pénale dans et conformément à son droit interne la tentative de commettre une infraction au sens des articles 6 et 7 de la présente Convention.

Article 10 – Responsabilité des personnes morales

1 Chaque Partie adopte les mesures qui s'avèrent nécessaires, conformément à ses principes juridiques, pour établir la responsabilité des personnes morales qui participent aux infractions visées aux articles 5 à 7 et 9 de la présente Convention.

2 Sous réserve des principes juridiques de la Partie, la responsabilité des personnes morales peut être pénale, civile ou administrative.

3 Cette responsabilité est sans préjudice de la responsabilité pénale des personnes physiques qui ont commis les infractions.

Article 11 – Sanctions et mesures

1 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour que les infractions visées aux articles 5 à 7 et 9 de la présente Convention soient passibles de peines effectives, proportionnées et dissuasives.

2 Toute condamnation antérieure et définitive prononcée dans un Etat étranger pour des infractions visées dans la présente Convention peut, dans la mesure où le droit interne le permet, être prise en considération dans la détermination de la peine, conformément au droit interne.

3 Chaque Partie veille à ce que les personnes morales tenues pour responsables, conformément à l'article 10, fassent l'objet de sanctions efficaces, proportionnées et dissuasives de nature pénale ou non pénale, y compris de sanctions pécuniaires.

Article 12 – Conditions et sauvegardes

1 Chaque Partie doit s'assurer que l'établissement, la mise en œuvre et l'application de l'incrimination visée aux articles 5 à 7 et 9 de la présente Convention soient réalisés en respectant les obligations relatives aux droits de l'homme lui incombant, notamment la liberté d'expression, la liberté d'association et la liberté de religion, telles qu'établies dans la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales, dans le Pacte international relatif aux droits civils et politiques, et d'autres obligations découlant du droit international, lorsqu'ils lui sont applicables.

2 L'établissement, la mise en œuvre et l'application de l'incrimination visée aux articles 5 à 7 et 9 de la présente Convention devraient en outre être subordonnés au principe de proportionnalité eu égard aux buts légitimes poursuivis et à leur nécessité dans une société démocratique, et devraient exclure toute forme d'arbitraire, de traitement discriminatoire ou raciste.

Article 13 – Protection, dédommagement et aide aux victimes du terrorisme

Chaque Partie adopte les mesures qui s'avèrent nécessaires pour protéger et soutenir les victimes du terrorisme commis sur son propre territoire. Ces mesures comprendront, selon les systèmes nationaux appropriés et sous réserve de la législation interne, notamment l'aide financière et le dédommagement des victimes du terrorisme et des membres de leur famille proche.

Article 14 – Compétence

1 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour établir sa compétence à l'égard de toute infraction pénale établie conformément à la présente Convention:

a lorsque l'infraction est commise sur son territoire;

b lorsque l'infraction est commise à bord d'un navire battant pavillon de cette Partie ou à bord d'un aéronef immatriculé dans cette Partie;

c lorsque l'infraction est commise par un de ses ressortissants.

2 Chaque Partie peut également établir sa compétence à l'égard de toute infraction pénale établie conformément à la présente Convention:

a lorsque l'infraction avait pour but, ou a eu pour résultat, la commission d'une infraction visée à l'article 1 de la présente Convention, sur son territoire ou contre l'un de ses nationaux;

b lorsque l'infraction avait pour but, ou a eu pour résultat, la commission d'une infraction visée à l'article 1 de la présente Convention, contre une installation publique de cette Partie située en dehors de son territoire, y compris ses locaux diplomatiques ou consulaires;

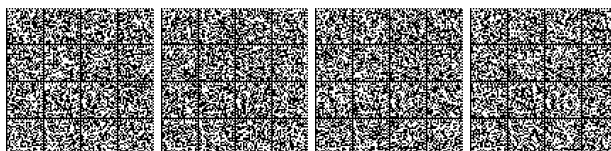
c lorsque l'infraction avait pour but, ou a eu pour résultat, la commission d'une infraction visée à l'article 1 de la présente Convention, visant à le contraindre cette Partie à accomplir un acte quelconque ou à s'en abstenir;

d lorsque l'infraction a été commise par un apatride ayant sa résidence habituelle sur son territoire;

e lorsque l'infraction a été commise à bord d'un aéronef exploité par le Gouvernement de cette Partie.

3 Chaque Partie adopte les mesures qui s'avéreront nécessaires pour établir sa compétence à l'égard de toute infraction pénale établie conformément à la présente Convention dans les cas où l'auteur présumé de l'infraction se trouve sur son territoire et où elle ne l'extrade pas vers une Partie dont la compétence de poursuivre est fondée sur une règle de compétence existant également dans la législation de la Partie requise.

4 Cette Convention n'exclut aucune compétence pénale exercée conformément aux lois nationales.

5 Lorsque plusieurs Parties revendiquent une compétence à l'égard d'une infraction présumée visée dans la présente Convention, les Parties concernées se concertent, lorsque cela est opportun, afin de déterminer celle qui est la mieux à même d'exercer les poursuites.

Article 15 – Devoir d'enquête

1 Lorsqu'elle est informée que l'auteur ou l'auteur présumé d'une infraction visée dans la présente Convention pourrait se trouver sur son territoire, la Partie concernée prend les mesures qui s'avèrent nécessaires, conformément à sa législation interne, pour enquêter sur les faits portés à sa connaissance.

2 Si elle estime que les circonstances le justifient, la Partie sur le territoire de laquelle se trouve l'auteur ou l'auteur présumé de l'infraction prend les mesures appropriées en vertu de sa législation interne pour assurer la présence de cette personne aux fins de poursuites ou d'extradition.

3 Toute personne à l'égard de laquelle sont prises les mesures visées au paragraphe 2 est en droit:

a de communiquer sans retard avec le plus proche représentant compétent de l'Etat dont elle a la nationalité ou qui est autrement habilité à protéger ses droits ou, s'il s'agit d'une personne apatride, de l'Etat sur le territoire duquel elle a sa résidence habituelle;

b de recevoir la visite d'un représentant de cet Etat;

c d'être informée des droits que lui confèrent les alinéas a et b.

4 Les droits énoncés au paragraphe 3 s'exerceront dans le cadre des lois et règlements de la Partie sur le territoire de laquelle se trouve l'auteur ou l'auteur présumé de l'infraction, étant entendu toutefois que ces lois et règlements doivent permettre la pleine réalisation des fins pour lesquelles ces droits sont accordés au paragraphe 3.

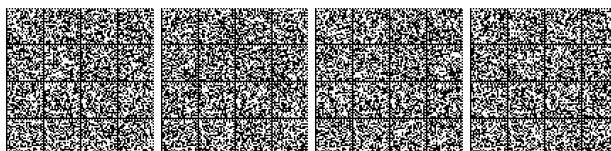
5 Les dispositions des paragraphes 3 et 4 de cet article sont sans préjudice du droit de toute Partie ayant établi sa compétence conformément à l'article 14, paragraphes 1.c et 2.d d'inviter le Comité international de la Croix-Rouge à communiquer avec l'auteur présumé de l'infraction et à lui rendre visite.

Article 16 – Non applicabilité de la Convention

La présente Convention ne s'applique pas lorsque les infractions visées aux articles 5 à 7 et 9 sont commises à l'intérieur d'un seul Etat, lorsque l'auteur présumé est un ressortissant de cet Etat et se trouve sur le territoire de cet Etat, et qu'aucun autre Etat n'a de raison, en vertu du paragraphe 1 ou 2 de l'article 14 de la présente Convention, d'établir sa compétence, étant entendu que les dispositions des articles 17 et 20 à 22 de la présente Convention, selon qu'il convient, s'appliquent en pareil cas.

Article 17 – Coopération internationale en matière pénale

1 Les Parties s'accordent l'assistance la plus large possible pour toute enquête, procédure pénale ou procédure d'extradition relatives aux infractions visées aux articles 5 à 7 et 9 de la présente Convention, y compris pour l'obtention des éléments de preuve dont elles disposent et qui sont nécessaires aux fins de la procédure.

2 Les Parties s'acquittent des obligations qui leur incombent en vertu du paragraphe 1, en conformité avec tout traité ou accord d'entraide judiciaire qui peut exister entre elles. En l'absence d'un tel traité ou accord, les Parties s'accordent cette entraide en conformité avec leur législation interne.

3 Les Parties coopèrent entre elles aussi largement que possible, autant que les lois, traités, accords et arrangements pertinents de la Partie requise le permettent, lors des enquêtes et procédures pénales concernant des infractions dont une personne morale peut être tenue responsable dans la Partie requérante, conformément à l'article 10 de la présente Convention.

4 Chaque Partie peut envisager d'établir des mécanismes additionnels afin de partager avec d'autres Parties les informations ou les éléments de preuve nécessaires pour établir les responsabilités pénales, civiles ou administratives, comme prévu à l'article 10.

Article 18 – Extrader ou poursuivre

1 Dans les cas où elle est compétente en vertu de l'article 14, la Partie sur le territoire de laquelle se trouve l'auteur présumé de l'infraction est tenue, si elle ne l'extrade pas, de soumettre l'affaire, sans retard excessif et sans aucune exception, que l'infraction ait été ou non commise sur son territoire, à ses autorités compétentes pour l'exercice de l'action pénale, selon une procédure conforme à la législation de cette Partie. Ces autorités prennent leur décision dans les mêmes conditions que pour toute autre infraction de caractère grave, conformément aux lois de cette Partie.

2 Chaque fois que, en vertu de sa législation interne, une Partie n'est autorisée à extrader ou à remettre un de ses ressortissants qu'à la condition que l'intéressé lui sera remis pour purger la peine qui lui a été imposée à l'issue du procès ou de la procédure pour lesquels l'extradition ou la remise avait été demandée, et que cette Partie et la Partie requérant l'extradition acceptent cette option et les autres conditions qu'elles peuvent juger appropriées, l'extradition ou la remise conditionnelle suffit pour dispenser la Partie requise de l'obligation prévue au paragraphe 1.

Article 19 – Extradition

1 Les infractions prévues aux articles 5 à 7 et 9 de la présente Convention sont de plein droit considérées comme des cas d'extradition dans tout traité d'extradition conclu entre des Parties avant l'entrée en vigueur de la présente Convention. Les Parties s'engagent à considérer ces infractions comme des cas d'extradition dans tout traité d'extradition à conclure par la suite entre elles.

2 Lorsqu'une Partie qui subordonne l'extradition à l'existence d'un traité est saisie d'une demande d'extradition par une autre Partie avec laquelle elle n'est pas liée par un traité d'extradition, la Partie requise a la latitude de considérer la présente Convention comme constituant la base juridique de l'extradition en ce qui concerne les infractions prévues aux articles 5 à 7 et 9 de la présente Convention. L'extradition est subordonnée aux autres conditions prévues par la législation de la Partie requise.

3 Les Parties qui ne subordonnent pas l'extradition à l'existence d'un traité reconnaissent les infractions prévues aux articles 5 à 7 et 9 de la présente Convention comme cas d'extradition entre elles dans les conditions prévues par la législation de la Partie requise.

4 Les infractions prévues aux articles 5 à 7 et 9 de la présente Convention sont, le cas échéant, considérées aux fins d'extradition entre des Parties comme ayant été commises non seulement sur le lieu de leur perpétration, mais aussi sur le territoire des Parties ayant établi leur compétence conformément à l'article 14.

5 Les dispositions de tous les traités et accords d'extradition conclus entre des Parties relatives aux infractions visées aux articles 5 à 7 et 9 de la présente Convention sont réputées être modifiées entre les Parties dans la mesure où elles sont incompatibles avec la présente Convention.

Article 20 – Exclusion de la clause d'exception politique

1 Aucune des infractions mentionnées aux articles 5 à 7 et 9 de la présente Convention ne sera considérée, pour les besoins de l'extradition ou de l'entraide judiciaire, comme une infraction politique ou comme une infraction connexe à une infraction politique, ou comme une infraction inspirée par des mobiles politiques. De ce fait, une demande d'extradition ou d'entraide judiciaire basée sur une telle infraction ne pourra être refusée au seul motif que cela concerne une infraction politique ou une infraction connexe à une infraction politique ou une infraction inspirée par des mobiles politiques.

2 Sans préjudice de l'application des articles 19 à 23 de la Convention de Vienne sur le droit des traités du 23 mai 1969 aux autres articles de la présente Convention, tout Etat ou la Communauté européenne peut, au moment de la signature ou au moment du dépôt de son instrument de ratification, d'acceptation ou d'adhésion à la Convention, déclarer qu'il/elle se réserve le droit de ne pas appliquer le paragraphe 1 de cet article en ce qui concerne l'extradition pour toute infraction mentionnée dans la présente Convention. La Partie s'engage à appliquer cette réserve au cas par cas, sur la base d'une décision dûment motivée.

3 Toute Partie peut retirer en tout ou en partie une réserve formulée par elle en vertu du paragraphe 2, au moyen d'une déclaration adressée au Secrétaire Général du Conseil de l'Europe et qui prendra effet à la date de sa réception.

4 Une Partie qui a formulé une réserve en vertu du paragraphe 2 de cet article ne peut prétendre à l'application du paragraphe 1 de cet article par une autre Partie; toutefois, elle peut, si la réserve est partielle ou conditionnelle, prétendre à l'application de cet article dans la mesure où elle l'a elle-même accepté.

5 Les réserves formulées sont valables pour une période de trois ans à compter du premier jour de l'entrée en vigueur de la présente Convention pour la Partie concernée. Toutefois, ces réserves peuvent être renouvelées pour des périodes de la même durée.

6 Douze mois avant l'expiration de la réserve, le Secrétaire Général du Conseil de l'Europe informe la Partie concernée de cette expiration. Trois mois avant la date d'expiration, la Partie notifie au Secrétaire Général son intention de maintenir, de modifier ou de retirer la réserve. Lorsqu'une Partie notifie au Secrétaire Général qu'elle maintient sa réserve, elle fournit des explications quant aux motifs justifiant son maintien. En l'absence de notification par la Partie concernée, le Secrétaire Général informe cette Partie que sa réserve est automatiquement prolongée pour une période de six mois. Si la Partie concernée ne notifie pas sa décision de maintenir ou de modifier ses réserves avant l'expiration de cette période, la réserve devient caduque.

7 Chaque fois qu'une Partie décide de ne pas extrader une personne en vertu de l'application de cette réserve, après avoir reçu une demande d'extradition d'une autre Partie, elle soumet l'affaire, sans exception aucune et sans retard injustifié, à ses autorités compétentes en vue de poursuites, sauf si d'autres dispositions ont été convenues entre la Partie requérante et la Partie requise. Les autorités compétentes, en vue des poursuites dans la Partie requise, prennent leur décision dans les mêmes conditions que pour toute infraction de caractère grave, conformément aux lois de cette Partie. La Partie requise communique sans retard injustifié l'issue finale des poursuites à la Partie requérante et au Secrétaire Général du Conseil de l'Europe, qui la communique à la Consultation des Parties prévue à l'article 30.

8 La décision de refus de la demande d'extradition en vertu de cette réserve est communiquée aussitôt à la Partie requérante. Si aucune décision judiciaire sur le fond n'est prise dans la Partie requise en vertu du paragraphe 7 dans un délai raisonnable, la Partie requérante peut en informer le Secrétaire Général du Conseil de l'Europe qui soumet la question à la Consultation des Parties prévue à l'article 30. Cette Consultation examine la question, émet un avis sur la conformité du refus avec les dispositions de la Convention et le soumet au Comité des Ministres afin qu'il adopte une déclaration en la matière. Lorsqu'il exerce ses fonctions en vertu de ce paragraphe, le Comité des Ministres se réunit dans sa composition restreinte aux Etats Parties.

Article 21 – Clause de discrimination

1 Aucune disposition de la présente Convention ne doit être interprétée comme impliquant une obligation d'extrader ou d'accorder l'entraide judiciaire, si la Partie requise a des raisons sérieuses de croire que la demande d'extradition motivée par une infraction visée aux articles 5 à 7 et 9 ou d'entraide judiciaire eu égard à de telles infractions a été présentée aux fins de poursuivre ou de punir une personne pour des considérations de race, de religion, de nationalité, d'origine ethnique ou d'opinions politiques, ou que la situation de cette personne risque d'être aggravée pour l'une ou l'autre de ces raisons.

2 Aucune disposition de la présente Convention ne doit être interprétée comme impliquant une obligation d'extrader si la personne faisant l'objet de la demande d'extradition risque d'être exposée à la torture ou à des peines ou traitements inhumains ou dégradants.

3 Aucune disposition de la présente Convention ne doit être interprétée comme impliquant une obligation d'extrader si la personne faisant l'objet de la demande d'extradition risque d'être exposée à la peine de mort ou, lorsque la loi de la Partie requise ne permet pas la peine privative de liberté à perpétuité, à la peine privative de liberté à perpétuité sans possibilité de remise de peine, à moins que la Partie requise ait l'obligation d'extrader conformément aux traités d'extradition applicables, si la Partie requérante donne des assurances jugées suffisantes par la Partie requise que la peine capitale ne sera pas prononcée ou, si elle est prononcée, qu'elle ne sera pas exécutée, ou que la personne concernée ne sera pas soumise à une peine privative de liberté à perpétuité sans possibilité de remise de peine.

Article 22 – Information spontanée

1 Sans préjudice de leurs propres investigations ou procédures, les autorités compétentes d'une Partie peuvent, sans demande préalable, transmettre aux autorités compétentes d'une autre Partie des informations recueillies dans le cadre de leur propre enquête lorsqu'elles estiment que la communication de ces informations pourrait aider la Partie qui reçoit les informations à engager ou à mener à bien des investigations ou des procédures, ou lorsque ces informations pourraient aboutir à une demande formulée par cette Partie en vertu de la présente Convention.

2 La Partie qui fournit les informations peut, conformément à son droit national, soumettre à certaines conditions leur utilisation par la Partie qui les reçoit.

3 La Partie qui reçoit les informations est tenue de respecter ces conditions.

4 Toutefois, toute Partie peut, à tout moment, par une déclaration adressée au Secrétaire Général du Conseil de l'Europe, déclarer qu'elle se réserve le droit de ne pas se soumettre aux conditions imposées en vertu des dispositions du paragraphe 2 du présent article par la Partie

qui fournit l'information, à moins qu'elle ne soit avisée au préalable de la nature de l'information à fournir et qu'elle accepte que cette dernière lui soit transmise.

Article 23 – Signature et entrée en vigueur

1 La présente Convention est ouverte à la signature des Etats membres du Conseil de l'Europe, de la Communauté européenne et des Etats non membres qui ont participé à son élaboration.

2 La présente Convention est soumise à ratification, acceptation ou approbation. Les instruments de ratification, d'acceptation ou d'approbation sont déposés près le Secrétaire Général du Conseil de l'Europe.

3 La présente Convention entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date à laquelle six Signataires, dont au moins quatre Etats membres du Conseil de l'Europe, auront exprimé leur consentement à être liés par la présente Convention, conformément aux dispositions du paragraphe 2.

4 Pour tout Signataire qui exprimera ultérieurement son consentement à être lié par la présente Convention, celle-ci entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de l'expression de son consentement à être lié par la présente Convention, conformément aux dispositions du paragraphe 2.

Article 24 – Adhésion à la Convention

1 Après l'entrée en vigueur de la présente Convention, le Comité des Ministres du Conseil de l'Europe peut, après avoir consulté les Parties à la présente Convention et en avoir obtenu l'assentiment unanime, inviter tout Etat non membre du Conseil de l'Europe n'ayant pas participé à son élaboration à adhérer à la présente Convention. La décision est prise à la majorité prévue à l'article 20.d du Statut du Conseil de l'Europe et à l'unanimité des représentants des Parties ayant le droit de siéger au Comité des Ministres.

2 Pour tout Etat adhérant à la Convention conformément au paragraphe 1 ci-dessus, la Convention entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de dépôt de l'instrument d'adhésion près le Secrétaire Général du Conseil de l'Europe.

Article 25 – Application territoriale

1 Tout Etat ou la Communauté européenne peut, au moment de la signature ou au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, désigner le ou les territoires auxquels s'appliquera la présente Convention.

2 Toute Partie peut, à tout autre moment par la suite, par une déclaration adressée au Secrétaire Général du Conseil de l'Europe, étendre l'application de la présente Convention à tout autre territoire désigné dans la déclaration. La Convention entrera en vigueur à l'égard de ce territoire le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de réception de la déclaration par le Secrétaire Général.

3 Toute déclaration faite en application des deux paragraphes précédents peut être retirée, en ce qui concerne tout territoire désigné dans cette déclaration, par notification adressée au Secrétaire Général du Conseil de l'Europe. Le retrait prendra effet le premier jour du mois qui

suit l'expiration d'une période de trois mois après la date de réception de ladite notification par le Secrétaire Général.

Article 26 – Effets de la Convention

1 L'objet de la présente Convention est de compléter les traités ou accords multilatéraux ou bilatéraux applicables existant entre les Parties, y compris les dispositions des traités du Conseil de l'Europe suivants:

- Convention européenne d'extradition, ouverte à la signature, à Paris, le 13 décembre 1957 (STE n° 24);
- Convention européenne d'entraide judiciaire en matière pénale, ouverte à la signature, à Strasbourg, le 20 avril 1959 (STE n° 30);
- Convention européenne pour la répression du terrorisme, ouverte à la signature, à Strasbourg, le 27 janvier 1977 (STE n° 90);
- Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale, ouvert à la signature, à Strasbourg, le 17 mars 1978 (STE n° 99);
- Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale, ouvert à la signature, à Strasbourg, le 8 novembre 2001 (STE n° 182);
- Protocole portant amendement à la Convention européenne pour la répression du terrorisme, ouvert à la signature, à Strasbourg, le 15 mai 2003 (STE n° 190).

2 Si deux ou plus de deux Parties ont déjà conclu un accord ou un traité relatif aux matières traitées par la présente Convention, ou si elles ont autrement établi leurs relations sur ces sujets, ou si elles le feront à l'avenir, elles ont aussi la faculté d'appliquer ledit accord ou traité, ou d'établir leurs relations en conséquence. Toutefois, lorsque les Parties établiront leurs relations concernant les matières faisant l'objet de la présente Convention d'une manière différente de celle prévue, elles le feront d'une manière qui ne soit pas incompatible avec les objectifs et principes de la Convention.

3 Les Parties qui sont membres de l'Union européenne appliquent, dans leurs relations mutuelles, les règles de la Communauté et de l'Union européenne dans la mesure où il existe des règles de la Communauté ou de l'Union européenne régissant le sujet particulier concerné et applicable au cas d'espèce, sans préjudice de l'objet et du but de la présente Convention et sans préjudice de son entière application à l'égard des autres Parties.

4 Aucune disposition de la présente Convention n'affecte d'autres droits, obligations et responsabilités d'une Partie et des individus découlant du droit international, y compris le droit international humanitaire.

5 Les activités des forces armées en période de conflit armé, au sens donné à ces termes en droit international humanitaire, qui sont régies par ce droit ne sont pas régies par la présente Convention, et les activités menées par les forces armées d'une Partie dans l'exercice de leurs fonctions officielles, dans la mesure où elles sont régies par d'autres règles de droit international, ne sont elles non plus régies par la présente Convention.

Article 27 – Amendements à la Convention

1 Des amendements à la présente Convention peuvent être proposés par une Partie, par le Comité des Ministres du Conseil de l'Europe ou par la Consultation des Parties.

2 Toute proposition d'amendement est communiquée par le Secrétaire Général du Conseil de l'Europe aux Parties.

3 En outre, tout amendement proposé par une Partie ou par le Comité des Ministres est communiqué à la Consultation des Parties, qui soumet au Comité des Ministres son avis sur l'amendement proposé.

4 Le Comité des Ministres examine l'amendement proposé et tout avis soumis par la Consultation des Parties et peut approuver l'amendement.

5 Le texte de tout amendement approuvé par le Comité des Ministres conformément au paragraphe 4 est transmis aux Parties pour acceptation.

6 Tout amendement approuvé conformément au paragraphe 4 entrera en vigueur le trentième jour après que toutes les Parties auront informé le Secrétaire Général qu'elles l'ont accepté.

Article 28 – Révision de l'annexe

1 Afin d'actualiser la liste des traités en annexe, des amendements peuvent être proposés par toute Partie ou par le Comité des Ministres. Ces propositions d'amendement ne peuvent concerner que des traités universels conclus au sein du système des Nations Unies, portant spécifiquement sur le terrorisme international et entrés en vigueur. Elles seront communiquées par le Secrétaire Général du Conseil de l'Europe aux Parties.

2 Après avoir consulté les Parties non membres, le Comité des Ministres peut adopter un amendement proposé à la majorité prévue à l'article 20.d du Statut du Conseil de l'Europe. Cet amendement entrera en vigueur à l'expiration d'une période d'un an à compter de la date à laquelle il a été transmis aux Parties. Pendant ce délai, toute Partie pourra notifier au Secrétaire Général du Conseil de l'Europe une objection à l'entrée en vigueur de l'amendement à son égard.

3 Si un tiers des Parties a notifié au Secrétaire Général une objection à l'entrée en vigueur de l'amendement, ce dernier n'entrera pas en vigueur.

4 Si moins d'un tiers des Parties a notifié une objection, l'amendement entrera en vigueur pour les Parties qui n'ont pas formulé d'objection.

5 Lorsqu'un amendement est entré en vigueur conformément au paragraphe 2 et qu'une Partie a formulé une objection à cet amendement, ce dernier entrera en vigueur dans cette Partie le premier jour du mois suivant la date à laquelle elle aura notifié son acceptation au Secrétaire Général du Conseil de l'Europe.

Article 29 – Règlement des différends

En cas de différend entre les Parties sur l'interprétation ou l'application de la présente Convention, elles s'efforceront de parvenir à un règlement du différend par la négociation ou par tout autre moyen pacifique de leur choix, y compris la soumission du différend à un tribunal arbitral qui prendra des décisions liant les Parties au différend, ou à la Cour internationale de Justice, selon un accord commun entre les Parties concernées.

Article 30 – Consultation des Parties

1 Les Parties se concertent périodiquement, afin:

a de faire des propositions en vue de faciliter ou d'améliorer l'usage et la mise en œuvre effectifs de la présente Convention, y compris l'identification de tout problème en la matière, ainsi que les effets de toute déclaration faite conformément à la présente Convention;

b de formuler un avis sur la conformité d'un refus d'extrader qui leur est soumis conformément à l'article 20, paragraphe 8;

c de faire des propositions d'amendement à la présente Convention conformément à l'article 27;

d de formuler un avis sur toute proposition d'amendement à la présente Convention qui leur est soumise conformément à l'article 27, paragraphe 3;

e d'exprimer un avis sur toute question relative à l'application de la présente Convention et faciliter l'échange d'informations sur les développements juridiques, politiques ou techniques importantes.

2 La Consultation des Parties est convoquée par le Secrétaire Général du Conseil de l'Europe chaque fois qu'il l'estime nécessaire et, en tout cas, si la majorité des Parties ou le Comité des Ministres en formulent la demande.

3 Les Parties sont assistées par le Secrétariat du Conseil de l'Europe dans l'exercice de leurs fonctions découlant du présent article.

Article 31 – Dénonciation

1 Toute Partie peut, à tout moment, dénoncer la présente Convention par notification au Secrétaire Général du Conseil de l'Europe.

2 La dénonciation prendra effet le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de réception de la notification par le Secrétaire Général.

Article 32 – Notification

Le Secrétaire Général du Conseil de l'Europe notifie aux Etats membres du Conseil de l'Europe, à la Communauté européenne, aux Etats non membres ayant participé à l'élaboration de la présente Convention, ainsi qu'à tout Etat y ayant adhéré ou ayant été invité à y adhérer:

a toute signature;

b le dépôt de tout instrument de ratification, d'acceptation, d'approbation ou d'adhésion;

c toute date d'entrée en vigueur de la présente Convention conformément à l'article 23;

d toute déclaration faite en application des articles 1, paragraphe 2, 22, paragraphe 4, et 25;

e tout autre acte, notification ou communication ayant trait à la présente Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Community, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé la présente Convention.

Fait à Varsovie, le 16 mai 2005, en français et en anglais, les deux textes faisant également foi, en un seul exemplaire qui sera déposé dans les archives du Conseil de l'Europe. Le Secrétaire Général du Conseil de l'Europe en communiquera copie certifiée conforme à chacun des Etats membres du Conseil de l'Europe, à la Communauté européenne, aux Etats non membres ayant participé à l'élaboration de la Convention et à tout Etat invité à y adhérer.

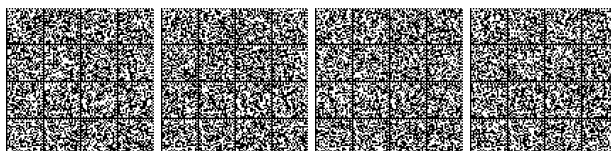
Certified a true copy of the sole original document, in English and in French, deposited in the archives of the Council of Europe.

Copie certifiée conforme à l'exemplaire original unique en langues française et anglaise, déposé dans les archives du Conseil de l'Europe.

Strasbourg, 22 September 2005

The Director General of Legal Affairs
of the Council of Europe,

Le Directeur Général des Affaires Juridiques
du Conseil de l'Europe,

Guy DE VEL

Annexe

1. Convention pour la répression de la capture illicite d'aéronefs, signée à La Haye le 16 décembre 1970;
2. Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, signée à Montréal le 23 septembre 1971;
3. Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques, adoptée à New York le 14 décembre 1973;
4. Convention internationale contre la prise d'otages, adoptée à New York le 17 décembre 1979;
5. Convention sur la protection physique des matières nucléaires, adoptée à Vienne le 3 mars 1980;
6. Protocole pour la répression des actes illicites de violence dans les aéroports servant à l'aviation civile internationale, conclu à Montréal le 24 février 1988;
7. Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, conclue à Rome le 10 mars 1988;
8. Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, conclu à Rome le 10 mars 1988;
9. Convention internationale pour la répression des attentats terroristes à l'explosif, adoptée à New York le 15 décembre 1997;
10. Convention internationale pour la répression du financement du terrorisme, adoptée à New York le 9 décembre 1999.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM

UNITED NATIONS
2005

International Convention for the Suppression of Acts of Nuclear Terrorism

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Bearing in mind the Convention on the Physical Protection of Nuclear Material of 1980,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

Recalling also that, pursuant to General Assembly resolution 51/210, an ad hoc committee was established to elaborate, inter alia, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments,

Noting that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security,

Noting also that existing multilateral legal provisions do not adequately address those attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

Noting that the activities of military forces of States are governed by rules of international law outside of the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.

2. "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

Whereby "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. "Nuclear facility" means:

(*a*) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;

(*b*) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.

4. "Device" means:

(*a*) Any nuclear explosive device; or

(*b*) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

5. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

6. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

(*a*) Possesses radioactive material or makes or possesses a device:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment;

(*b*) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment; or

(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

2. Any person also commits an offence if that person:

(*a*) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (*b*) of the present article; or

(*b*) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

(*a*) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(*b*) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(*c*) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 9, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 7, 12, 14, 15, 16 and 17 shall, as appropriate, apply in those cases.

Article 4

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

4. This Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.

Article 5

Each State Party shall adopt such measures as may be necessary:

(*a*) To establish as criminal offences under its national law the offences set forth in article 2;

(*b*) To make those offences punishable by appropriate penalties which take into account the grave nature of these offences.

Article 6

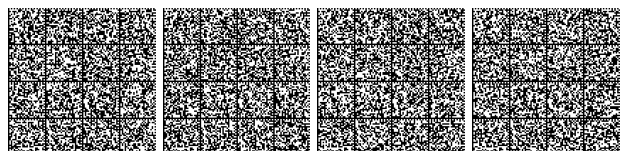
Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 7

1. States Parties shall cooperate by:

(*a*) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences;

(*b*) Exchanging accurate and verified information in accordance with their national law and in the manner and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 2 and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in article 9 in respect of the commission of the offences set forth in article 2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations.

2. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from

another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

4. States Parties shall inform the Secretary-General of the United Nations of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The Secretary-General of the United Nations shall communicate such information regarding competent authorities and liaison points to all States Parties and the International Atomic Energy Agency. Such authorities and liaison points must be accessible on a continuous basis.

Article 8

For purposes of preventing offences under this Convention, States Parties shall make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency.

Article 9

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(*a*) The offence is committed in the territory of that State; or

(*b*) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(*c*) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(*a*) The offence is committed against a national of that State; or

(*b*) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(*c*) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(*d*) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(*e*) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its national law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its national law.

Article 10

1. Upon receiving information that an offence set forth in article 2 has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:

(*a*) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(*b*) To be visited by a representative of that State;

(*c*) To be informed of that person's rights under subparagraphs (*a*) and (*b*).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the

provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, paragraph 1 (*c*) or 2 (*c*), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 9, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that

person is present and applicable provisions of international law, including international law of human rights.

Article 13

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 9, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 14

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

Article 15

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 16

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 17

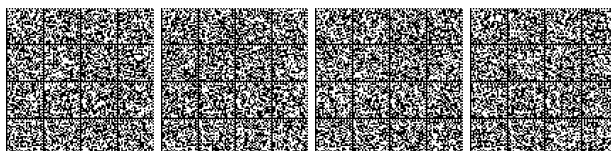
1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(*a*) The person freely gives his or her informed consent; and

(*b*) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(*a*) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(*b*) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(*c*) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(*d*) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 18

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of such items shall:

(*a*) Take steps to render harmless the radioactive material, device or nuclear facility;

(*b*) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and

(*c*) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.

2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.

3. (*a*) Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3 (*b*) of the present article, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes;

(*b*) Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State

shall ensure that they are placed as soon as possible in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such items pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3 (*b*) of the present article, be taken after consultations between the States concerned and any relevant international organizations.

5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law.

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

States Parties shall conduct consultations with one another directly or through the Secretary-General of the United Nations, with the assistance of

international organizations as necessary, to ensure effective implementation of this Convention.

Article 21

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months of the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. This Convention shall be open for signature by all States from 14 September 2005 until 31 December 2006 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State Party may propose an amendment to this Convention. The proposed amendment shall be submitted to the depositary, who circulates it immediately to all States Parties.

2. If the majority of the States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin no sooner than three months after the invitations are issued.

3. The conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted by a two-thirds majority of all States Parties. Any amendment adopted at the conference shall be promptly circulated by the depositary to all States Parties.

4. The amendment adopted pursuant to paragraph 3 of the present article shall enter into force for each State Party that deposits its instrument of ratification, acceptance, accession or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their relevant instrument. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day after the date on which that State deposits its relevant instrument.

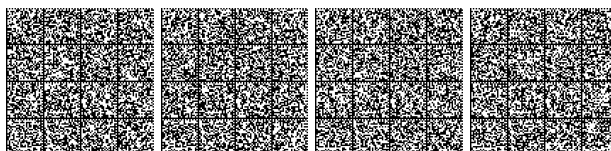
Article 27

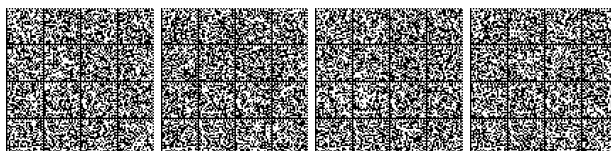
1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 14 September 2005.

PROTOCOL AMENDING THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

PROTOCOLE PORTANT AMENDEMENT À LA CONVENTION EUROPÉENNE POUR LA RÉPRESSION DU TERRORISME

The member States of the Council of Europe, signatory to this Protocol,

Bearing in mind the Committee of Ministers of the Council of Europe's Declaration of 12 September 2001 and its Decision of 21 September 2001 on the Fight against International Terrorism, and the Vilnius Declaration on Regional Co-operation and the Consolidation of Democratic Stability in Greater Europe adopted by the Committee of Ministers at its 110th Session in Vilnius on 3 May 2002;

Bearing in mind the Parliamentary Assembly of the Council of Europe's Recommendation 1550 (2002) on Combating terrorism and respect for human rights;

Bearing in mind the General Assembly of the United Nations Resolution A/RES/51/210 on measures to eliminate international terrorism and the annexed Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and its Resolution A/RES/49/60 on measures to eliminate international terrorism and the Declaration on Measures to Eliminate International Terrorism annexed thereto;

Wishing to strengthen the fight against terrorism while respecting human rights, and mindful of the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe on 11 July 2002;

Considering for that purpose that it would be appropriate to amend the European Convention on the Suppression of Terrorism (ETS No. 90) opened for signature in Strasbourg on 27 January 1977, hereinafter referred to as "the Convention";

Considering that it would be appropriate to update the list of international conventions in Article 1 of the Convention and to provide for a simplified procedure to subsequently update it as required;

Considering that it would be appropriate to strengthen the follow-up of the implementation of the Convention;

Considering that it would be appropriate to review the reservation regime;

Considering that it would be appropriate to open the Convention to the signature of all interested States,

Have agreed as follows:

Article 1

1 The introductory paragraph to Article 1 of the Convention shall become paragraph 1 of this article. In sub-paragraph b of this paragraph, the term "signed" shall be replaced by the term "concluded" and sub-paragraphs c, d, e and f of this paragraph shall be replaced by the following sub-paragraphs:

"c an offence within the scope of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted at New York on 14 December 1973;

Les Etats membres du Conseil de l'Europe, signataires de ce Protocole,

Ayant à l'esprit la Déclaration du Comité des Ministres du Conseil de l'Europe du 12 septembre 2001 et sa décision du 21 septembre 2001 sur la lutte contre le terrorisme international, et la Déclaration de Vilnius sur la coopération régionale et la consolidation de la stabilité démocratique dans la Grande Europe adoptée par le Comité des Ministres lors de sa 110e session à Vilnius, le 3 mai 2002 ;

Ayant à l'esprit la Recommandation 1550 (2002) de l'Assemblée parlementaire du Conseil de l'Europe sur la lutte contre le terrorisme et le respect des droits de l'homme ;

Ayant à l'esprit la résolution A/RES/51/210 de l'Assemblée générale de l'Organisation des Nations Unies sur les mesures visant à éliminer le terrorisme international et la déclaration, en annexe, complétant la déclaration de 1994 sur les mesures visant à éliminer le terrorisme international, et sa résolution A/RES/49/60 sur les mesures visant à éliminer le terrorisme international et, en annexe, la déclaration sur les mesures visant à éliminer le terrorisme international ;

Souhaitant renforcer la lutte contre le terrorisme tout en respectant les droits de l'homme et ayant à l'esprit les Lignes directrices sur les droits de l'homme et la lutte contre le terrorisme adoptées par le Comité des Ministres du Conseil de l'Europe le 11 juillet 2002 ;

Considérant à cette fin qu'il est souhaitable d'amender la Convention européenne pour la répression du terrorisme (STE n° 90) ouverte à la signature à Strasbourg le 27 janvier 1977, ci-après dénommée « la Convention » ;

Considérant qu'il est souhaitable de mettre à jour la liste des conventions internationales énumérées par l'article 1 de la Convention et de prévoir une procédure simplifiée afin de la mettre à jour par la suite et selon les besoins ;

Considérant que le renforcement du suivi de la mise en œuvre de la Convention est souhaitable ;

Considérant qu'une révision du régime des réserves est souhaitable ;

Considérant qu'il est souhaitable d'ouvrir la Convention à la signature de tous les Etats intéressés,

Sont convenus de ce qui suit :

Article 1

Le paragraphe introductif de l'article 1 de la Convention devient le paragraphe 1 de cet article. Au sous-paragraphe b de ce paragraphe, le terme « signée » est remplacé par le terme « conclue » et les sous-paragraphes c, d, e et f de ce paragraphe sont remplacés respectivement par :

« c les infractions comprises dans le champ d'application de la Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques, adoptée à New York le 14 décembre 1973 ;

d an offence within the scope of the International Convention Against the Taking of Hostages, adopted at New York on 17 December 1979;

e an offence within the scope of the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;

f an offence within the scope of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;".

2 Paragraph 1 of Article 1 of the Convention shall be supplemented by the following four sub-paragraphs:

"g an offence within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

h an offence within the scope of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;

i an offence within the scope of the International Convention for the Suppression of Terrorist Bombings, adopted at New York on 15 December 1997;

j an offence within the scope of the International Convention for the Suppression of the Financing of Terrorism, adopted at New York on 9 December 1999.".

3 The text of Article 1 of the Convention shall be supplemented by the following paragraph:

"2 Insofar as they are not covered by the conventions listed under paragraph 1, the same shall apply, for the purpose of extradition between Contracting States, not only to the commission of those principal offences as a perpetrator but also to:

a the attempt to commit any of these principal offences;

b the participation as an accomplice in the perpetration of any of these principal offences or in an attempt to commit any of them;

c organising the perpetration of, or directing others to commit or attempt to commit, any of these principal offences.".

Article 2

Paragraph 3 of Article 2 of the Convention shall be amended to read as follows:

"3 The same shall apply to:

a the attempt to commit any of the foregoing offences;

b the participation as an accomplice in any of the foregoing offences or in an attempt to commit any such offence;

c organising the perpetration of, or directing others to commit or attempt to commit, any of the foregoing offences.".

Article 3

1 The text of Article 4 of the Convention shall become paragraph 1 of this article and a new sentence shall be added at the end of this paragraph as follows: "Contracting States undertake to consider such offences as extraditable offences in every extradition treaty subsequently concluded between them.".

d les infractions comprises dans le champ d'application de la Convention internationale contre la prise d'otages, adoptée à New York le 17 décembre 1979;

e les infractions comprises dans le champ d'application de la Convention sur la protection physique des matières nucléaires, adoptée à Vienne le 3 mars 1980;

f les infractions comprises dans le champ d'application du Protocole pour la répression des actes illicites de violence dans les aéroports servant à l'aviation civile internationale, conclu à Montréal le 24 février 1988;»

2 Le paragraphe 1 de l'article 1 de la Convention est complété par les quatre sous-paragraphes suivants:

«g les infractions comprises dans le champ d'application de la Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, conclue à Rome le 10 mars 1988;

h les infractions comprises dans le champ d'application du Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, conclu à Rome le 10 mars 1988;

i les infractions comprises dans le champ d'application de la Convention internationale pour la répression des attentats terroristes à l'explosif, adoptée à New York le 15 décembre 1997;

j les infractions comprises dans le champ d'application de la Convention internationale pour la répression du financement du terrorisme, adoptée à New York le 9 décembre 1999.».

3 Le texte de l'article 1 de la Convention est complété par le paragraphe suivant:

«2 Dans la mesure où elles ne seraient pas couvertes par les conventions visées au paragraphe 1, il en sera de même, pour les besoins de l'extradition entre Etats contractants, non seulement du fait de commettre, comme auteur matériel principal ces infractions principales, mais également:

a de la tentative de commettre une de ces infractions principales;

b de la complicité avec une de ces infractions principales ou avec la tentative de commettre une de ces infractions principales;

c de l'organisation ou du fait de donner l'ordre à d'autres de commettre ou de tenter de commettre une de ces infractions principales.»

Article 2

Le paragraphe 3 de l'article 2 de la Convention est remplacé par les termes suivants:

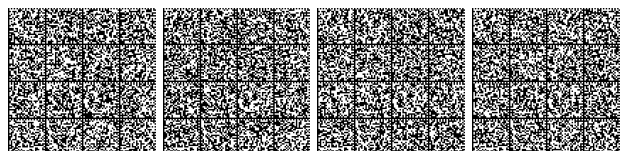
«3 Il en sera de même:

a de la tentative de commettre une de ces infractions principales;

b de la complicité à une de ces infractions principales ou à la tentative de commettre une de ces infractions principales;

c de l'organisation ou du fait de donner l'ordre à d'autres de commettre ou de tenter de commettre une de ces infractions principales.».

Article 3

1 Le texte de l'article 4 de la Convention devient le paragraphe 1 de cet article et une nouvelle phrase est ajoutée à la fin de ce paragraphe, dont le libellé est: «Les Etats contractants s'engagent à considérer ces infractions comme cas d'extradition dans tout traité d'extradition à conclure par la suite entre eux.».

2 The text of Article 4 of the Convention shall be supplemented by the following paragraph:

"2 When a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, the requested Contracting State may, at its discretion, consider this Convention as a legal basis for extradition in relation to any of the offences mentioned in Articles 1 or 2.".

Article 4

1 The text of Article 5 of the Convention shall become paragraph 1 of this article.

2 The text of Article 5 of the Convention shall be supplemented by the following paragraphs:

"2 Nothing in this Convention shall be interpreted as imposing on the requested State an obligation to extradite if the person subject of the extradition request risks being exposed to torture.

3 Nothing in this Convention shall be interpreted either as imposing on the requested State an obligation to extradite if the person subject of the extradition request risks being exposed to the death penalty or, where the law of the requested State does not allow for life imprisonment, to life imprisonment without the possibility of parole, unless under applicable extradition treaties the requested State is under the obligation to extradite if the requesting State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, where imposed, will not be carried out, or that the person concerned will not be subject to life imprisonment without the possibility of parole.".

Article 5

A new article shall be inserted after Article 8 of the Convention and shall read as follows:

"Article 9

The Contracting States may conclude between themselves bilateral or multilateral agreements in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.".

Article 6

1 Article 9 of the Convention shall become Article 10.

2 Paragraph 1 of new Article 10 shall be amended to read as follows:

"The European Committee on Crime Problems (CDPC) is responsible for following the application of the Convention. The CDPC:

a shall be kept informed regarding the application of the Convention;

b shall make proposals with a view to facilitating or improving the application of the Convention;

c shall make recommendations to the Committee of Ministers concerning the proposals for amendments to the Convention, and shall give its opinion on any proposals for amendments to the Convention submitted by a Contracting State in accordance with Articles 12 and 13;

d shall, at the request of a Contracting State, express an opinion on any question concerning the application of the Convention;

2 Le texte de l'article 4 de la Convention est complété par le paragraphe suivant:

«2 Lorsqu'un Etat contractant qui subordonne l'extradition à l'existence d'un traité est saisi d'une demande d'extradition par un autre Etat contractant avec lequel il n'est pas lié par un traité d'extradition, l'Etat contractant requis a la latitude de considérer la présente Convention comme constituant la base juridique de l'extradition en ce qui concerne les infractions prévues aux articles 1 ou 2.».

Article 4

1 Le texte de l'article 5 de la Convention devient le paragraphe 1 de cet article.

2 Le texte de l'article 5 de la Convention est complété par les paragraphes suivants:

«2 Aucune disposition de la présente Convention ne doit être interprétée comme impliquant une obligation d'extrader pour l'Etat requis si la personne faisant l'objet de la demande d'extradition risque d'être exposée à la torture.

3 Aucune disposition de la présente Convention ne doit être interprétée comme impliquant une obligation d'extrader pour l'Etat requis si la personne faisant l'objet de la demande d'extradition risque d'être exposée à la peine de mort ou, lorsque la loi de l'Etat requis ne permet pas la peine privative de liberté à perpétuité, à la peine privative de liberté à perpétuité sans possibilité de remise de peine, à moins que l'Etat requis ait l'obligation d'extrader conformément aux traités d'extradition applicables, si l'Etat requérant donne des assurances jugées suffisantes par l'Etat requis que la peine capitale ne sera pas prononcée ou, si elle est prononcée, qu'elle ne sera pas exécutée, ou que la personne concernée ne sera pas soumise à une peine privative de liberté à perpétuité sans possibilité de remise de peine.»

Article 5

Un nouvel article est introduit après l'article 8 de la Convention dont le libellé est le suivant:

«Article 9

Les Etats contractants pourront conclure entre eux des accords bilatéraux ou multilatéraux pour compléter les dispositions de la présente Convention ou pour faciliter l'application des principes contenus dans celle-ci.».

Article 6

1 L'article 9 de la Convention devient l'article 10.

2 Le libellé du paragraphe 1 du nouvel article 10 est modifié comme suit:

«Le Comité européen pour les problèmes criminels (CDPC) est chargé de suivre l'application de la présente Convention. Le CDPC:

a est tenu informé de l'application de la Convention;

b fait des propositions en vue de faciliter ou d'améliorer l'application de la Convention;

c adresse au Comité des Ministres des recommandations relatives aux propositions d'amendements et donne son avis sur toute proposition d'amendement présentée par un Etat contractant conformément aux articles 12 et 13;

d exprime, à la demande d'un Etat contractant, un avis sur toute question relative à l'application de la Convention;

e shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of the execution of the Convention;

f shall make recommendations to the Committee of Ministers concerning non-member States of the Council of Europe to be invited to accede to the Convention in accordance with Article 14, paragraph 3;

g shall submit every year to the Committee of Ministers of the Council of Europe a report on the follow-up given to this article in the application of the Convention.".

3 Paragraph 2 of new Article 10 shall be deleted.

Article 7

1 Article 10 of the Convention shall become Article 11.

2 In the first sentence of paragraph 1 of new Article 11, the terms "Article 9, paragraph 2" shall be replaced by the terms "Article 10.e, or by negotiation". In the second sentence of this paragraph, the term "two" shall be deleted. The remaining sentences of this paragraph shall be deleted.

3 Paragraph 2 of new Article 11 shall become paragraph 6 of this article. The sentence "Where a majority cannot be reached, the referee shall have a casting vote" shall be added after the second sentence and in the last sentence the terms "Its award" shall be replaced by the terms "The tribunal's judgement".

4 The text of new Article 11 shall be supplemented by the following paragraphs:

"2 In the case of disputes involving Parties which are member States of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the European Court of Human Rights at the request of the other Party.

3 In the case of disputes involving any Party which is not a member of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the International Court of Justice at the request of the other Party.

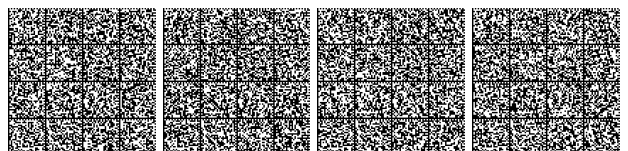
4 In the cases covered by paragraphs 2 and 3 of this article, where the President of the Court concerned is a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court, or if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court who is not a national of one of the Parties to the dispute.

5 The procedures referred to in paragraphs 2 or 3 and 4 above apply, mutatis mutandis, where the arbitrators fail to agree on the nomination of a referee in accordance with paragraph 1 of this article.".

Article 8

A new article shall be introduced after new Article 11 and shall read as follows:

"Article 12

1 Amendments to this Convention may be proposed by any Contracting State, or by the Committee of Ministers. Proposals for amendment shall be communicated by the Secretary General of the Council of Europe to the Contracting States.

e facilite autant que de besoin le règlement amiable de toute difficulté à laquelle l'exécution de la Convention donnerait lieu ;

f adresse au Comité des Ministres des recommandations relatives à l'invitation des Etats non membres à adhérer à la Convention conformément au paragraphe 3 de l'article 14 ;

g soumet chaque année au Comité des Ministres du Conseil de l'Europe un rapport sur la mise en œuvre de cet article aux fins de l'application de la Convention.».

3 Le paragraphe 2 du nouvel article 10 est supprimé.

Article 7

1 L'article 10 de la Convention devient l'article 11.

2 A la première phrase du paragraphe 1 du nouvel article 11 les termes «dans le cadre du paragraphe 2 de l'article 9» sont remplacés par les termes «ni dans le cadre de l'article 10.e ni par voie de négociation». A la deuxième phrase de ce paragraphe les termes «les deux arbitres désigneront un troisième arbitre» sont remplacés par les termes «les arbitres désigneront un autre arbitre, président du tribunal». Les phrases suivantes de ce paragraphe sont supprimées.

3 Le paragraphe 2 du nouvel article 11 devient le paragraphe 6 de cet article. La phrase «Lorsqu'une majorité ne peut être acquise, le président a une voix prépondérante» est ajoutée après la deuxième phrase, et à la dernière phrase les termes «Sa sentence» sont remplacés par les termes «La sentence du tribunal».

4 Le texte du nouvel article 11 est complété par les paragraphes suivants :

«2 Lorsque les parties au différend sont membres du Conseil de l'Europe et si, dans un délai de trois mois à compter de la demande d'arbitrage, l'une des Parties n'a pas procédé à la désignation d'un arbitre conformément au paragraphe 1 du présent article, cet arbitre est désigné par le président de la Cour européenne des Droits de l'Homme à la demande de l'autre Partie.

3 Lorsqu'une des parties au différend n'est pas membre du Conseil de l'Europe et si, dans un délai de trois mois à compter de la demande d'arbitrage, l'une des Parties n'a pas procédé à la désignation d'un arbitre conformément au paragraphe 1 du présent article, cet arbitre est désigné par le président de la Cour internationale de justice à la demande de l'autre Partie.

4 Dans les cas prévus aux paragraphes 2 et 3 du présent article, si le président de la cour concernée est le ressortissant de l'une des parties au différend, la désignation de l'arbitre incombe au vice-président de la cour ou, si le vice-président est le ressortissant de l'une des parties au différend, au membre le plus ancien de la cour qui n'est pas le ressortissant de l'une des parties au différend.

5 Les procédures prévues aux paragraphes 2 ou 3 et 4 s'appliqueront mutatis mutandis au cas où les arbitres ne pourraient pas se mettre d'accord sur le choix du président conformément au paragraphe 1 du présent article.».

Article 8

Un nouvel article est ajouté après le nouvel article 11 avec le libellé suivant :

«Article 12

1 Des amendements à la présente Convention peuvent être proposés par tout Etat contractant ou par le Comité des Ministres. Ces propositions d'amendement sont communiquées par le Secrétaire Général du Conseil de l'Europe aux Etats contractants.

2 After having consulted the non-member Contracting States and, if necessary, the CDPC, the Committee of Ministers may adopt the amendment in accordance with the majority provided for in Article 20.d of the Statute of the Council of Europe. The Secretary General of the Council of Europe shall submit any amendments adopted to the Contracting States for acceptance.

3 Any amendment adopted in accordance with the above paragraph shall enter into force on the thirtieth day following notification by all the Parties to the Secretary General of their acceptance thereof.".

Article 9

A new article shall be introduced after new Article 12 and shall read as follows:

"Article 13

1 In order to update the list of treaties in Article 1, paragraph 1, amendments may be proposed by any Contracting State or by the Committee of Ministers. These proposals for amendment shall only concern treaties concluded within the United Nations Organisation dealing specifically with international terrorism and having entered into force. They shall be communicated by the Secretary General of the Council of Europe to the Contracting States.

2 After having consulted the non-member Contracting States and, if necessary the CDPC, the Committee of Ministers may adopt a proposed amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Contracting States. During this period, any Contracting State may notify the Secretary General of any objection to the entry into force of the amendment in its respect.

3 If one-third of the Contracting States notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.

4 If less than one-third of the Contracting States notifies an objection, the amendment shall enter into force for those Contracting States which have not notified an objection.

5 Once an amendment has entered into force in accordance with paragraph 2 of this article and a Contracting State has notified an objection to it, this amendment shall come into force in respect of the Contracting State concerned on the first day of the month following the date on which it has notified the Secretary General of the Council of Europe of its acceptance.".

Article 10

1 Article 11 of the Convention shall become Article 14.

2 In the first sentence of paragraph 1 of new Article 14 the terms "member States of the Council of Europe" shall be replaced by the terms "member States of and Observer States to the Council of Europe" and in the second and third sentences, the terms "or approval" shall be replaced by the terms ", approval or accession".

3 The text of new Article 14 shall be supplemented by the following paragraph:

"3 The Committee of Ministers of the Council of Europe, after consulting the CDPC, may invite any State not a member of the Council of Europe, other than those referred to under paragraph 1 of this article, to accede to the Convention. The decision shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.".

2 Après avoir consulté les Etats contractants non membres et si nécessaire le CDPC, le Comité des Ministres peut adopter l'amendement. La décision est prise à la majorité prévue à l'article 20.d du Statut du Conseil de l'Europe. Le texte de tout amendement ainsi adopté est transmis par le Secrétaire Général du Conseil de l'Europe aux Etats contractants pour acceptation.

3 Tout amendement adopté conformément au paragraphe précédent entre en vigueur le trentième jour après que toutes les Parties ont notifié au Secrétaire Général qu'elles l'ont accepté.»

Article 9

Un nouvel article est ajouté après le nouvel article 12 avec le libellé suivant:

«**Article 13**

1 Afin d'actualiser la liste des traités mentionnés au paragraphe 1 de l'article 1, des amendements peuvent être proposés par tout Etat contractant ou par le Comité des Ministres. Ces propositions d'amendement ne peuvent concerner que des traités conclus au sein de l'Organisation des Nations Unies, portant spécifiquement sur le terrorisme international et entrés en vigueur. Ils sont communiqués par le Secrétaire Général du Conseil de l'Europe aux Etats contractants.

2 Après avoir consulté les Etats contractants non membres et si nécessaire le CDPC, le Comité des Ministres peut adopter un amendement proposé à la majorité prévue à l'article 20.d du Statut du Conseil de l'Europe. Cet amendement entre en vigueur à l'expiration d'une période d'un an à compter de la date à laquelle il aura été transmis aux Etats contractants. Pendant ce délai, tout Etat contractant pourra notifier au Secrétaire Général une objection à l'entrée en vigueur de l'amendement à son égard.

3 Si un tiers des Etats contractants a notifié au Secrétaire Général du Conseil de l'Europe une objection à l'entrée en vigueur de l'amendement, celui-ci n'entre pas en vigueur.

4 Si moins d'un tiers des Etats contractants a notifié une objection, l'amendement entre en vigueur pour les Etats contractants qui n'ont pas formulé d'objection.

5 Lorsqu'un amendement est entré en vigueur conformément au paragraphe 2 du présent article et qu'un Etat contractant avait formulé une objection à cet amendement, celui-ci entre en vigueur dans cet Etat le premier jour du mois suivant la date à laquelle il aura notifié son acceptation au Secrétaire Général du Conseil de l'Europe.»

Article 10

1 L'article 11 de la Convention devient l'article 14.

2 Dans la première phrase du paragraphe 1 du nouvel article 14 les termes «et des Etats observateurs» sont ajoutés après les termes «Etats membres», la deuxième phrase est libellée comme suit: «Elle fera l'objet d'une ratification, acceptation, approbation ou adhésion», et dans la troisième phrase les termes «ou d'approbation» sont remplacés par les termes «d'approbation ou d'adhésion».

3 Le texte du nouvel article 14 est complété par le paragraphe suivant:

«3 Le Comité des Ministres du Conseil de l'Europe peut, après avoir consulté le CDPC, inviter tout Etat non membre du Conseil de l'Europe, autre que ceux visés au paragraphe 1 du présent article, à adhérer à la présente Convention. La décision est prise à la majorité prévue à l'article 20.d du Statut du Conseil de l'Europe et à l'unanimité des représentants des Etats contractants ayant le droit de siéger au Comité des Ministres.».

4 Paragraph 3 of new Article 14 shall become paragraph 4 of this article, and the terms "or approving" and "or approval" shall be replaced respectively by the terms "approving or acceding" and "approval or accession".

Article 11

1 Article 12 of the Convention shall become Article 15.

2 In the first sentence of paragraph 1 of new Article 15, the terms "or approval" shall be replaced by the terms "approval or accession".

3 In the first sentence of paragraph 2 of new Article 15, the terms "or approval" are replaced by the terms "approval or accession".

Article 12

1 Reservations to the Convention made prior to the opening for signature of the present Protocol shall not be applicable to the Convention as amended by the present Protocol.

2 Article 13 of the Convention shall become Article 16.

3 In the first sentence of paragraph 1 of new Article 16 the terms "Party to the Convention on 15 May 2003" shall be added before the term "may" and the terms "of the Protocol amending the Convention" shall be added after the term "approval". A second sentence shall be added after the terms "political motives" and shall read: "The Contracting State undertakes to apply this reservation on a case-by-case basis, through a duly reasoned decision and taking into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:". The remainder of the first sentence shall be deleted, with the exception of sub-paragraphs a, b and c.

4 The text of new Article 16 shall be supplemented by the following paragraph:

"2 When applying paragraph 1 of this article, a Contracting State shall indicate the offences to which its reservation applies.".

5 Paragraph 2 of new Article 16 shall become paragraph 3 of this article. In the first sentence of this paragraph, the term "Contracting" shall be added before the term "State" and the terms "the foregoing paragraph" shall be replaced by the terms "paragraph 1.".

6 Paragraph 3 of new Article 16 shall become paragraph 4 of this article. In the first sentence of this paragraph, the term "Contracting" shall be added before the term "State".

7 The text of new Article 16 shall be supplemented by the following paragraphs:

"5 The reservations referred to in paragraph 1 of this article shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the State concerned. However, such reservations may be renewed for periods of the same duration.

6 Twelve months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Contracting State concerned. No later than three months before expiry, the Contracting State shall notify the Secretary General of the Council of Europe that it is upholding, amending or withdrawing its reservation. Where a Contracting State notifies the Secretary General of the Council of Europe that it is upholding its reservation, it shall provide an explanation of the grounds justifying its continuance. In the

4 Le paragraphe 3 du nouvel article 14 devient le paragraphe 4 de cet article et les termes «ou l'approuvera» sont remplacés par les termes «l'approuvera ou y adhérera» et les termes «d'approbation» sont remplacés par les termes «d'approbation ou d'adhésion».

Article 11

1 L'article 12 de la Convention devient l'article 15.

2 Dans la première phrase du paragraphe 1 du nouvel article 15 les termes «d'approbation» sont remplacés par les termes «d'approbation ou d'adhésion».

3 Dans la première phrase du paragraphe 2 du nouvel article 15 les termes «d'approbation» sont remplacés par les termes «d'approbation ou d'adhésion».

Article 12

1 Les réserves à la Convention formulées avant l'ouverture à la signature du présent Protocole ne sont pas applicables à la Convention telle qu'amendée par le présent Protocole.

2 L'article 13 de la Convention devient l'article 16.

3 A la première phrase du premier paragraphe du nouvel article 16 les termes «partie à la Convention au 15 mai 2003» sont ajoutés avant le terme «peut» et les termes «du Protocole portant amendement à la Convention» sont ajoutés après le terme «approbation». La deuxième phrase suivante est ajoutée après les termes «mobiles politiques»: «L'Etat contractant s'engage à appliquer cette réserve au cas par cas sur la base d'une décision dûment motivée et à prendre dûment en considération, lors de l'évaluation du caractère de l'infraction, son caractère de particulière gravité, y compris:». Le reste de la première phrase est supprimé, à l'exception des sous-paragraphes a, b et c.

4 Le texte du nouvel article 16 est complété par le paragraphe suivant:

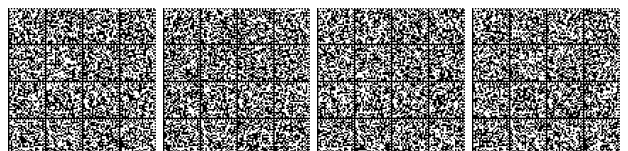
«2 Lorsqu'il applique le paragraphe 1 du présent article, l'Etat contractant indique les infractions auxquelles s'applique sa réserve.».

5 Le paragraphe 2 du nouvel article 16 devient le paragraphe 3 de cet article. A la première phrase de ce paragraphe le terme «contractant» est ajouté après le terme «Etat», et le terme «précédent» est remplacé par le terme «1».

6 Le paragraphe 3 du nouvel article 16 devient le paragraphe 4 de cet article. A la première phrase de ce paragraphe le terme «contractant» est ajouté après le terme «Etat».

7 Le texte du nouvel article 16 est complété par les paragraphes suivants:

«5 Les réserves formulées en vertu du paragraphe 1 du présent article sont valables pour une période de trois ans à compter du premier jour de l'entrée en vigueur de la Convention telle qu'amendée pour l'Etat concerné. Toutefois, ces réserves peuvent être renouvelées pour des périodes de la même durée.

6 Douze mois avant l'expiration de la réserve, le Secrétaire Général du Conseil de l'Europe informe l'Etat contractant concerné de cette expiration. Trois mois avant la date d'expiration, l'Etat contractant notifie au Secrétaire Général son intention de maintenir, de modifier ou de retirer la réserve. Lorsqu'un Etat contractant notifie au Secrétaire Général du Conseil de l'Europe qu'il maintient sa réserve, il fournit des explications quant aux motifs justifiant son maintien. En l'absence de notification par l'Etat contractant concerné, le Secrétaire Général du

absence of notification by the Contracting State concerned, the Secretary General of the Council of Europe shall inform that Contracting State that its reservation is considered to have been extended automatically for a period of six months. Failure by the Contracting State concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.

7 Where a Contracting State does not extradite a person, in application of a reservation made in accordance with paragraph 1 of this article, after receiving a request for extradition from another Contracting State, it shall submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution, unless the requesting State and the requested State otherwise agree. The competent authorities, for the purpose of prosecution in the requested State, shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State. The requested State shall communicate, without undue delay, the final outcome of the proceedings to the requesting State and to the Secretary General of the Council of Europe, who shall forward it to the Conference provided in Article 17.

8 The decision to refuse the extradition request, on the basis of a reservation made in accordance with paragraph 1 of this article, shall be forwarded promptly to the requesting State. If within a reasonable time no judicial decision on the merits has been taken in the requested State according to paragraph 7, the requesting State may communicate this fact to the Secretary General of the Council of Europe, who shall submit the matter to the Conference provided for in Article 17. This Conference shall consider the matter and issue an opinion on the conformity of the refusal with the Convention and shall submit it to the Committee of Ministers for the purpose of issuing a declaration thereon. When performing its functions under this paragraph, the Committee of Ministers shall meet in its composition restricted to the Contracting States.".

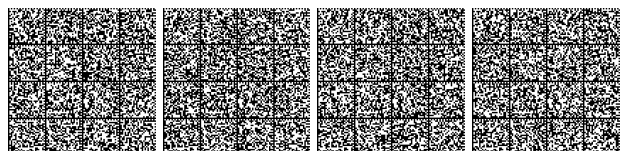
Article 13

A new article shall be introduced after new Article 16 of the Convention, and shall read as follows:

"Article 17

1 Without prejudice to the application of Article 10, there shall be a Conference of States Parties against Terrorism (hereinafter referred to as the "COSTER") responsible for ensuring:

- a the effective use and operation of this Convention including the identification of any problems therein, in close contact with the CDPC;
- b the examination of reservations made in accordance with Article 16 and in particular the procedure provided in Article 16, paragraph 8;
- c the exchange of information on significant legal and policy developments pertaining to the fight against terrorism;
- d the examination, at the request of the Committee of Ministers, of measures adopted within the Council of Europe in the field of the fight against terrorism and, where appropriate, the elaboration of proposals for additional measures necessary to improve international co-operation in the area of the fight against terrorism and, where co-operation in criminal matters is concerned, in consultation with the CDPC;
- e the preparation of opinions in the area of the fight against terrorism and the execution of the terms of reference given by the Committee of Ministers.

2 The COSTER shall be composed of one expert appointed by each of the Contracting States. It will meet once a year on a regular basis, and on an extraordinary basis at the request of the Secretary General of the Council of Europe or of at least one-third of the Contracting States.

Conseil de l'Europe informe cet Etat contractant que sa réserve est automatiquement prolongée pour une période de six mois. Si l'Etat contractant concerné ne notifie pas sa décision de maintenir ou de modifier ses réserves avant l'expiration de cette période, la réserve devient caduque.

7 Chaque fois qu'un Etat contractant décide de ne pas extrader une personne en vertu de l'application de la réserve formulée conformément au paragraphe 1 du présent article, après avoir reçu une demande d'extradition d'un autre Etat contractant, il soumet l'affaire, sans exception aucune et sans retard injustifié, à ses autorités compétentes en vue de poursuites, sauf si d'autres dispositions ont été convenues entre l'Etat requérant et l'Etat requis. Les autorités compétentes, en vue des poursuites dans l'Etat requis, prennent leur décision dans les mêmes conditions que pour toute infraction de caractère grave conformément aux lois de cet Etat. L'Etat requis communique sans retard injustifié l'issue finale des poursuites à l'Etat requérant et au Secrétaire Général du Conseil de l'Europe qui la communique à la Conférence prévue à l'article 17.

8 La décision de refus de la demande d'extradition, en vertu de la réserve formulée conformément au paragraphe 1 du présent article, est communiquée aussitôt à l'Etat requérant. Si aucune décision judiciaire sur le fond n'est prise dans l'Etat requis en vertu du paragraphe 7 du présent article dans un délai raisonnable, l'Etat requérant peut en informer le Secrétaire Général du Conseil de l'Europe qui soumet la question à la Conférence prévue à l'article 17. Cette Conférence examine la question et émet un avis sur la conformité du refus avec les dispositions de la Convention et le soumet au Comité des Ministres afin qu'il adopte une déclaration en la matière. Lorsqu'il exerce ses fonctions en vertu de ce paragraphe, le Comité des Ministres se réunit dans sa composition restreinte aux Etats contractants.».

Article 13

Un nouvel article est ajouté après le nouvel article 16 avec le libellé suivant:

«Article 17

1 Sans préjudice pour l'application de l'article 10, une Conférence des Etats Contractants contre le terrorisme (ci-après dénommée le «COSTER») veillera à assurer:

a l'application et le fonctionnement effectifs de la présente Convention, y compris l'identification de tout problème y relatif, en contact étroit avec le CDPC;

b l'examen des réserves formulées en conformité avec l'article 16 et notamment la procédure prévue à l'article 16, paragraphe 8;

c l'échange d'informations sur les évolutions juridiques et politiques significatives dans le domaine de la lutte contre le terrorisme;

d l'examen, à la demande du Comité des Ministres, des mesures adoptées dans le cadre du Conseil de l'Europe dans le domaine de la lutte contre le terrorisme et, le cas échéant, l'élaboration de propositions de mesures supplémentaires nécessaires en vue d'améliorer la coopération internationale dans le domaine de la lutte contre le terrorisme, et ce en consultation avec le CDPC lorsque ces mesures concernent la coopération en matière pénale;

e l'élaboration des avis dans le domaine de la lutte contre le terrorisme et l'exécution des mandats demandés par le Comité des Ministres.

2 Le COSTER est composé d'un expert nommé par chaque Etat contractant. Il se réunit en session ordinaire une fois par an et en session extraordinaire à la demande du Secrétaire Général du Conseil de l'Europe ou à la demande d'au moins un tiers des Etats contractants.

3 The COSTER will adopt its own Rules of Procedure. The expenses for the participation of Contracting States which are member States of the Council of Europe shall be borne by the Council of Europe. The Secretariat of the Council of Europe will assist the COSTER in carrying out its functions pursuant to this article.

4 The CDPC shall be kept periodically informed about the work of the COSTER.".

Article 14

Article 14 of the Convention shall become Article 18.

Article 15

Article 15 of the Convention shall be deleted.

Article 16

1 Article 16 of the Convention shall become Article 19.

2 In the introductory sentence of new Article 19, the terms "member States of the Council" shall be replaced by the terms "Contracting States".

3 In paragraph b of new Article 19, the terms "or approval" shall be replaced by the terms "approval or accession".

4 In paragraph c of new Article 19, the number "11" shall read "14".

5 In paragraph d of new Article 19, the number "12" shall read "15".

6 Paragraphs e and f of new Article 19 shall be deleted.

7 Paragraph g of new Article 19 shall become paragraph e of this article and the number "14" shall read "18".

8 Paragraph h of new Article 19 shall be deleted.

Article 17

1 This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by:

a signature without reservation as to ratification, acceptance or approval; or

b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 18

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 17.

Article 19

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c the date of entry into force of this Protocol, in accordance with Article 18;

d any other act, notification or communication relating to this Protocol.

3 Le COSTER adopte son Règlement intérieur. Les dépenses relatives à la participation des Etats contractants qui sont membres du Conseil de l'Europe sont prises en charge par le Conseil de l'Europe. Le Secrétariat du Conseil de l'Europe assiste le COSTER dans l'exercice des fonctions découlant de cet article.

4 Le CDPC est tenu périodiquement informé des travaux du COSTER.».

Article 14

L'article 14 de la Convention devient l'article 18.

Article 15

L'article 15 de la Convention est supprimé.

Article 16

1 L'article 16 de la Convention devient l'article 19.

2 Dans la phrase introductive du nouvel article 19 les termes «aux Etats membres» sont remplacés par les termes «aux Etats contractants».

3 Au paragraphe b du no uvel article 19 les termes «ou d'approbation» sont remplacés par les termes «d'approbation ou d'adhésion».

4 Au paragraphe c du nouvel article 19 le chiffre «11» devient «14».

5 Au paragraphe d du nouvel article 19 le chiffre «12» devient «15».

6 Les paragraphes e et f du nouvel article 19 sont supprimés.

7 Le paragraphe g du nouvel article 19 devient le paragraphe e de cet article et le chiffre «14» devient «18».

8 Le paragraphe h du nouvel article 19 est supprimé.

Article 17

1 Le présent Protocole est ouvert à la signature des Etats membres du Conseil de l'Europe signataires de la Convention, qui peuvent exprimer leur consentement à être liés par:

a signature sans réserve de ratification, d'acceptation ou d'approbation; ou

b signature sous réserve de ratification, d'acceptation ou d'approbation, suivie de ratification, d'acceptation ou d'approbation.

2 Les instruments de ratification, d'acceptation ou d'approbation seront déposés près le Secrétaire Général du Conseil de l'Europe.

Article 18

Le présent Protocole entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date à laquelle toutes les Parties à la Convention auront exprimé leur consentement à être liées par le Protocole, conformément aux dispositions de l'article 17.

Article 19

Le Secrétaire Général du Conseil de l'Europe notifiera aux Etats membres du Conseil de l'Europe:

a toute signature;

b le dépôt de tout instrument de ratification, d'acceptation ou d'approbation;

c la date d'entrée en vigueur du présent Protocole, conformément à l'article 18;

d tout autre acte, notification ou communication ayant trait au présent Protocole.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 15th day of May 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé le présent Protocole.

Fait à Strasbourg, le 15 mai 2003, en français et en anglais, les deux textes faisant également foi, en un seul exemplaire qui sera déposé dans les archives du Conseil de l'Europe. Le Secrétaire Général du Conseil de l'Europe en communiquera copie certifiée conforme à chacun des Etats signataires.

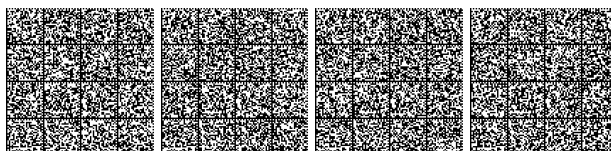
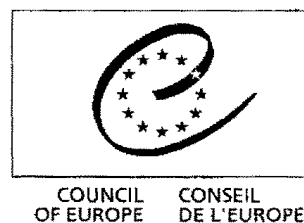
Certified a true copy of the sole original document, in English and in French, deposited in the archives of the Council of Europe.

Copie certifiée conforme à l'exemplaire original unique en langues française et anglaise, déposé dans les archives du Conseil de l'Europe.

Strasbourg, 23 September 2003

The Director General of Legal Affairs of the Council of Europe,

Le Directeur Général des Affaires Juridiques du Conseil de l'Europe,

Guy DE VEL

Council of Europe Treaty Series - No. 198

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

Warsaw, 16.V.2005

Preamble

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for the use of modern and effective methods on an international scale;

Believing that one of these methods consists in depriving criminals of the proceeds from crime and instrumentalities;

Considering that for the attainment of this aim a well-functioning system of international co-operation also must be established;

Bearing in mind the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141 – hereinafter referred to as "the 1990 Convention");

Recalling also Resolution 1373(2001) on threats to international peace and security caused by terrorist acts adopted by the Security Council of the United Nations on 28 September 2001, and particularly its paragraph 3.d;

Recalling the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 and particularly its Articles 2 and 4, which oblige States Parties to establish the financing of terrorism as a criminal offence;

Convinced of the necessity to take immediate steps to ratify and to implement fully the International Convention for the Suppression of the Financing of Terrorism, cited above,

Have agreed as follows:

Chapter I – Use of terms

Article 1 – Use of terms

For the purposes of this Convention:

a "proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property as defined in sub-paragraph b of this article;

b "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;

c "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

d "confiscation" means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;

e "predicate offence" means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 9 of this Convention.

f "financial intelligence unit" (hereinafter referred to as "FIU") means a central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information

i concerning suspected proceeds and potential financing of terrorism, or

ii required by national legislation or regulation,

in order to combat money laundering and financing of terrorism;

g "freezing" or "seizure" means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

h "financing of terrorism" means the acts set out in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, cited above.

Chapter II – Financing of terrorism

Article 2 – Application of the Convention to the financing of terrorism

1 Each Party shall adopt such legislative and other measures as may be necessary to enable it to apply the provisions contained in Chapters III, IV and V of this Convention to the financing of terrorism.

2 In particular, each Party shall ensure that it is able to search, trace, identify, freeze, seize and confiscate property, of a licit or illicit origin, used or allocated to be used by any means, in whole or in part, for the financing of terrorism, or the proceeds of this offence, and to provide co-operation to this end to the widest possible extent.

Chapter III – Measures to be taken at national level

Section 1 – General provisions

Article 3 – Confiscation measures

1 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property.

2 Provided that paragraph 1 of this article applies to money laundering and to the categories of offences in the appendix to the Convention, each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies

a only in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year. However, each Party may make a declaration on this provision in respect of the confiscation of the proceeds from tax offences for the sole purpose of being able to confiscate such proceeds, both nationally and through international cooperation, under national and international tax-debt recovery legislation; and/or

b only to a list of specified offences.

3 Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.

4 Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

Article 4 – Investigative and provisional measures

Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify, trace, freeze or seize rapidly property which is liable to confiscation pursuant to Article 3, in order in particular to facilitate the enforcement of a later confiscation.

Article 5 – Freezing, seizure and confiscation

Each Party shall adopt such legislative and other measures as may be necessary to ensure that the measures to freeze, seize and confiscate also encompass:

a the property into which the proceeds have been transformed or converted;

b property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds;

c income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.

Article 6 – Management of frozen or seized property

Each Party shall adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of this Convention.

Article 7 – Investigative powers and techniques

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy.

2 Without prejudice to paragraph 1, each Party shall adopt such legislative and other measures as may be necessary to enable it to:

a determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts;

b obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account;

c monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts; and,

d ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out.

Parties shall consider extending this provision to accounts held in non-bank financial institutions.

3 Each Party shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto, such as observation, interception of telecommunications, access to computer systems and order to produce specific documents.

Article 8 – Legal remedies

Each Party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under Articles 3, 4 and 5 and such other provisions in this Section as are relevant, shall have effective legal remedies in order to preserve their rights.

Article 9 – Laundering offences

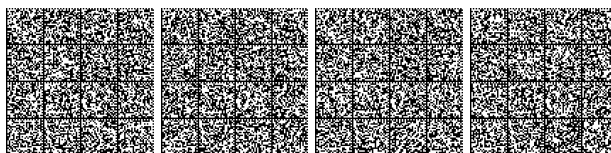
1 Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

a the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

b the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;

and, subject to its constitutional principles and the basic concepts of its legal system;

c the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

d participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2 For the purposes of implementing or applying paragraph 1 of this article:

a it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party;

b it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

c knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

3 Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this Article, in either or both of the following cases where the offender

a suspected that the property was proceeds,

b ought to have assumed that the property was proceeds.

4 Provided that paragraph 1 of this article applies to the categories of predicate offences in the appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:

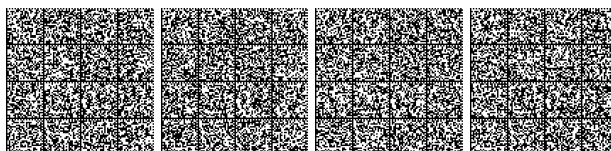
a only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or

b only to a list of specified predicate offences; and/or

c to a category of serious offences in the national law of the Party.

5 Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.

6 Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.

7 Each Party shall ensure that predicate offences for money laundering extend to conduct that occurred in another State, which constitutes an offence in that State, and which would have constituted a predicate offence had it occurred domestically. Each Party may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically.

Article 10 – Corporate liability

1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

a a power of representation of the legal person; or

b an authority to take decisions on behalf of the legal person; or

c an authority to exercise control within the legal person,

as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

3 Liability of a legal person under this Article shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.

4 Each Party shall ensure that legal persons held liable in accordance with this Article, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11 – Previous decisions

Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention.

Section 2 - Financial intelligence unit (FIU) and prevention

Article 12 – Financial intelligence unit (FIU)

1 Each Party shall adopt such legislative and other measures as may be necessary to establish an FIU as defined in this Convention.

2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that its FIU has access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of suspicious transaction reports.

Article 13 – Measures to prevent money laundering

1 Each Party shall adopt such legislative and other measures as may be necessary to institute a comprehensive domestic regulatory and supervisory or monitoring regime to prevent money laundering and shall take due account of applicable international standards, including in particular the recommendations adopted by the Financial Action Task Force on Money Laundering (FATF).

2 In that respect, each Party shall adopt, in particular, such legislative and other measures as may be necessary to:

a require legal and natural persons which engage in activities which are particularly likely to be used for money laundering purposes, and as far as these activities are concerned, to:

i identify and verify the identity of their customers and, where applicable, their ultimate beneficial owners, and to conduct ongoing due diligence on the business relationship, while taking into account a risk based approach;

ii report suspicions on money laundering subject to safeguard;

iii take supporting measures, such as record keeping on customer identification and transactions, training of personnel and the establishment of internal policies and procedures, and if appropriate, adapted to their size and nature of business;

b prohibit, as appropriate, the persons referred to in sub-paragraph a from disclosing the fact that a suspicious transaction report or related information has been transmitted or that a money laundering investigation is being or may be carried out;

c ensure that the persons referred to in sub-paragraph a are subject to effective systems for monitoring, and where applicable supervision, with a view to ensure their compliance with the requirements to combat money laundering, where appropriate on a risk sensitive basis.

3 In that respect, each Party shall adopt such legislative or other measures as may be necessary to detect the significant physical cross border transportation of cash and appropriate bearer negotiable instruments.

Article 14 – Postponement of domestic suspicious transactions

Each Party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by the FIU or, as appropriate, by any other competent authorities or body, when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion. Each party may restrict such a measure to cases where a suspicious transaction report has been submitted. The maximum duration of any suspension or withholding of consent to a transaction shall be subject to any relevant provisions in national law.

Chapter IV – International co-operation

Section 1 – Principles of international co-operation

Article 15 – General principles and measures for international co-operation

1 The Parties shall mutually co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.

2 Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:

a for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;

b for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.

3 Investigative assistance and provisional measures sought in paragraph 2.b shall be carried out as permitted by and in accordance with the internal law of the requested Party. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its law.

4 Each Party shall adopt such legislative or other measures as may be necessary to ensure that the requests coming from other Parties in order to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of internal procedures.

Section 2 – Investigative assistance

Article 16 – Obligation to assist

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

Article 17 – Requests for information on bank accounts

1 Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts.

2 The obligation set out in this article shall apply only to the extent that the information is in the possession of the bank keeping the account.

3 In addition to the requirements of Article 37, the requesting party shall, in the request:

a state why it considers that the requested information is likely to be of substantial value for the purpose of the criminal investigation into the offence;

b state on what grounds it presumes that banks in the requested Party hold the account and specify, to the widest extent possible, which banks and/or accounts may be involved; and

c include any additional information available which may facilitate the execution of the request.

4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.

5 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that this article applies only to the categories of offences specified in the list contained in the appendix to this Convention.

6 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 18 – Requests for information on banking transactions

1 On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2 The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.

3 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.

4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.

5 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 19 – Requests for the monitoring of banking transactions

1 Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party.

2 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.

3 The decision to monitor shall be taken in each individual case by the competent authorities of the requested Party, with due regard for the national law of that Party.

4 The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Parties.

5 Parties may extend this provision to accounts held in non-bank financial institutions.

Article 20 – Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

Section 3 – Provisional measures

Article 21 – Obligation to take provisional measures

1 At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.

2 A Party which has received a request for confiscation pursuant to Article 23 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

Article 22 – Execution of provisional measures

1 After the execution of the provisional measures requested in conformity with paragraph 1 of Article 21, the requesting Party shall provide spontaneously and as soon as possible to the requested Party all information which may question or modify the extent of these measures. The requesting Party shall also provide without delays all complementary information requested by the requested Party and which is necessary for the implementation of and the follow up to the provisional measures.

2 Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

Section 4 – Confiscation

Article 23 – Obligation to confiscate

1 A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:

a enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or

b submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.

2 For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.

3 The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.

4 If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

5 The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention.

Article 24 – Execution of confiscation

1 The procedures for obtaining and enforcing the confiscation under Article 23 shall be governed by the law of the requested Party.

2 The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.

3 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.

4 If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.

5 In the case of Article 23, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

Article 25 – Confiscated property

1 Property confiscated by a Party pursuant to Articles 23 and 24 of this Convention, shall be disposed of by that Party in accordance with its domestic law and administrative procedures.

2 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners.

3 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.

Article 26 – Right of enforcement and maximum amount of confiscation

1 A request for confiscation made under Articles 23 and 24 does not affect the right of the requesting Party to enforce itself the confiscation order.

2 Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

Article 27 – Imprisonment in default

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 23, if the requesting Party has so specified in the request.

Section 5 – Refusal and postponement of co-operation

Article 28 – Grounds for refusal

1 Co-operation under this chapter may be refused if:

a the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or

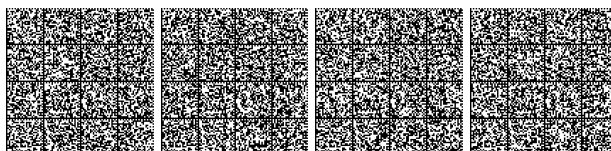
b the execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of the requested Party; or

c in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or

d the offence to which the request relates is a fiscal offence, with the exception of the financing of terrorism;

e the offence to which the request relates is a political offence, with the exception of the financing of terrorism; or

f the requested Party considers that compliance with the action sought would be contrary to the principle of *ne bis in idem*; or

g the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action. Where dual criminality is required for co-operation under this chapter, that requirement shall be deemed to be satisfied regardless of whether both Parties place the offence within the same category of offences or denominate the offence by the same terminology, provided that both Parties criminalise the conduct underlying the offence.

2 Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.

3 Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

4 Co-operation under Section 4 of this chapter may also be refused if:

a under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or

b without prejudice to the obligation pursuant to Article 23, paragraph 3, it would be contrary to the principles of the domestic law of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:

i an economic advantage that might be qualified as its proceeds; or

ii property that might be qualified as its instrumentalities; or

c under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or

d without prejudice to Article 23, paragraph 5, the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or

e confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or

f the request relates to a confiscation order resulting from a decision rendered in absentia of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings conducted by the requesting Party leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.

5 For the purpose of paragraph 4.f of this article a decision is not considered to have been rendered *in absentia* if:

a it has been confirmed or pronounced after opposition by the person concerned; or

b it has been rendered on appeal, provided that the appeal was lodged by the person concerned.

6 When considering, for the purposes of paragraph 4.f of this article if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made *in absentia*, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.

7 A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

8 Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:

a the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;

b the fact that the natural person against whom an order of confiscation of proceeds has been issued has died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved shall not be invoked as an obstacle to render assistance in accordance with Article 23, paragraph 1.a.

c the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering, in accordance with Article 9.2.b of this Convention, shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter.

Article 29 – Postponement

The requested Party may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

Article 30 – Partial or conditional granting of a request

Before refusing or postponing co-operation under this chapter, the requested Party shall, where appropriate after having consulted the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

Section 6 – Notification and protection of third parties' rights

Article 31 – Notification of documents

1 The Parties shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.

2 Nothing in this article is intended to interfere with:

a the possibility of sending judicial documents, by postal channels, directly to persons abroad;

b the possibility for judicial officers, officials or other competent authorities of the Party of origin to effect service of judicial documents directly through the consular authorities of that Party or through judicial officers, officials or other competent authorities of the Party of destination,

unless the Party of destination makes a declaration to the contrary to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

3 When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Party, this Party shall indicate what legal remedies are available under its law to such persons.

Article 32 – Recognition of foreign decisions

1 When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.

2 Recognition may be refused if:

a third parties did not have adequate opportunity to assert their rights; or

b the decision is incompatible with a decision already taken in the requested Party on the same matter; or

c it is incompatible with the ordre public of the requested Party; or

d the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of the requested Party.

Section 7 – Procedural and other general rules

Article 33 – Central authority

1 The Parties shall designate a central authority or, if necessary, authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.

2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

Article 34 – Direct communication

1 The central authorities shall communicate directly with one another.

2 In the event of urgency, requests or communications under this chapter may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).

4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

5 Requests or communications under Section 2 of this chapter, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

6 Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party.

Article 35 – Form of request and languages

1 All requests under this chapter shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting Party is prepared, upon request, to produce at any time a written record of such communication and the original. However each Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, indicate the conditions in which it is ready to accept and execute requests received electronically or by any other means of communication.

2 Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.

3 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any State or the European Community may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 36 – Legalisation

Documents transmitted in application of this chapter shall be exempt from all legalisation formalities.

Article 37 – Content of request

1 Any request for co-operation under this chapter shall specify:

a the authority making the request and the authority carrying out the investigations or proceedings;

b the object of and the reason for the request;

c the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;

d in so far as the co-operation involves coercive action:

i the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and

ii an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;

e where necessary and in so far as possible:

i details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and

ii the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and

f any particular procedure the requesting Party wishes to be followed.

2 A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3 In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:

a in the case of Article 23, paragraph 1.a:

i a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;

ii an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;

iii information as to the extent to which the enforcement of the order is requested; and

iv information as to the necessity of taking any provisional measures;

b in the case of Article 23, paragraph 1.b, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

c when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

Article 38 – Defective requests

1 If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.

2 The requested Party may set a time-limit for the receipt of such amendments or information.

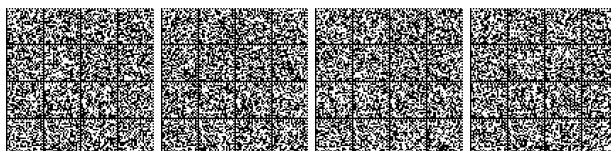
3 Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

Article 39 – Plurality of requests

1 Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.

2 In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

Article 40 – Obligation to give reasons

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

Article 41 – Information

1 The requested Party shall promptly inform the requesting Party of:

a the action initiated on a request under this chapter;

b the final result of the action carried out on the basis of the request;

c a decision to refuse, postpone or make conditional, in whole or in part, any co-operation under this chapter;

d any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and

e in the event of provisional measures taken pursuant to a request under Sections 2 or 3 of this chapter, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.

2 The requesting Party shall promptly inform the requested Party of:

a any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and

b any development, factual or legal, by reason of which any action under this chapter is no longer justified.

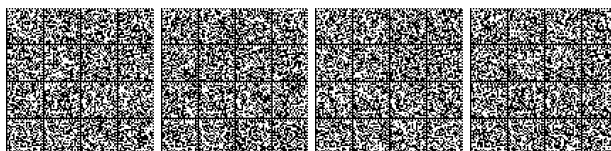
3 Where a Party, on the basis of the same confiscation order, requests confiscation in more than one Party, it shall inform all Parties which are affected by an enforcement of the order about the request.

Article 42 – Restriction of use

1 The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.

2 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

Article 43 – Confidentiality

1 The requesting Party may require that the requested Party keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

2 The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

3 Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 20 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.

Article 44 – Costs

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

Article 45 – Damages

1 When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2 A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

Chapter V – Co-operation between FIUs

Article 46 – Co-operation between FIUs

1 Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.

2 For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.

3 Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.

4 Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.

5 When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.

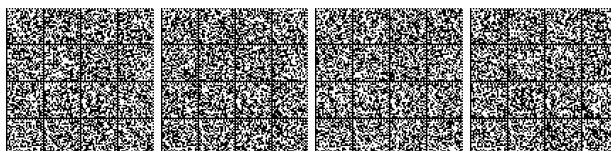
6 An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.

7 Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.

8 When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.

9 Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.

10 FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.

11 The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.

12 The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.

13 Parties shall indicate the unit which is an FIU within the meaning of this article.

Article 47 – International co-operation for postponement of suspicious transactions

1 Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.

2 The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:

a the transaction is related to money laundering; and

b the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report.

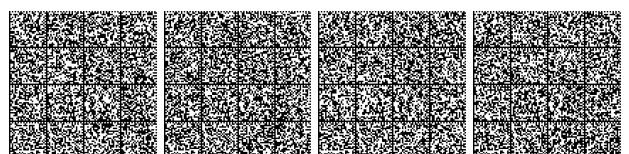
Chapter VI – Monitoring mechanism and settlement of disputes

Article 48 – Monitoring mechanism and settlement of disputes

1 The Conference of the Parties (COP) shall be responsible for following the implementation of the Convention. The COP:

a shall monitor the proper implementation of the Convention by the Parties;

b shall, at the request of a Party, express an opinion on any question concerning the interpretation and application of the Convention.

2 The COP shall carry out the functions under paragraph 1.a above by using any available Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval) public summaries (for Moneyval countries) and any available FATF public summaries (for FATF countries), supplemented by periodic self assessment questionnaires, as appropriate. The monitoring procedure will deal with areas covered by this Convention only in respect of those areas which are not covered by other relevant international standards on which mutual evaluations are carried out by the FATF and Moneyval.

3 If the COP concludes that it requires further information in the discharge of its functions, it shall liaise with the Party concerned, taking advantage, if so required by the COP, of the procedure and mechanism of Moneyval. The Party concerned shall then report back to the COP. The COP shall on this basis decide whether or not to carry out a more in-depth assessment of the position of the Party concerned. This may, but need not necessarily, involve, a country visit by an evaluation team.

4 In case of a dispute between Parties as to the interpretation or application of the Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the COP, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

5 The COP shall adopt its own rules of procedure.

6 The Secretary General of the Council of Europe shall convene the COP not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the COP shall be held in accordance with the rules of procedure adopted by the COP.

Chapter VII – Final Provisions

Article 49 – Signature and entry into force

1 The Convention shall be open for signature by the member States of the Council of Europe, the European Community and non-member States which have participated in its elaboration. Such States or the European Community may express their consent to be bound by:

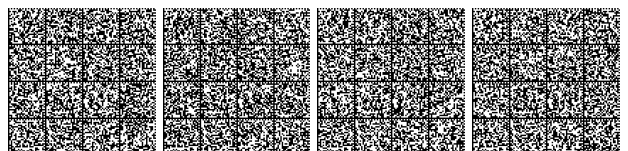
a signature without reservation as to ratification, acceptance or approval; or

b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 6 signatories, of which at least four are member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

4 In respect of any Signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 1.

5 No Party to the 1990 Convention may ratify, accept or approve this Convention without considering itself bound by at least the provisions corresponding to the provisions of the 1990 Convention to which it is bound.

6 As from its entry into force, Parties to this Convention, which are at the same time Parties to the 1990 Convention:

a shall apply the provisions of this Convention in their mutual relationships;

b shall continue to apply the provisions of the 1990 Convention in their relations with other Parties to the said Convention, but not to the present Convention.

Article 50 – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Parties to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Parties entitled to sit on the Committee.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 51 – Territorial application

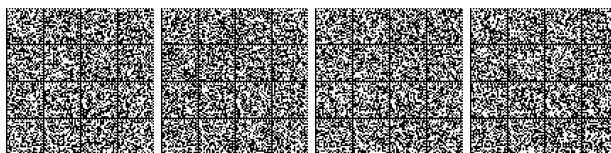
1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which the Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of the Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 52 – Relationship to other conventions and agreements

1 This Convention does not affect the rights and undertakings of Parties derived from international multilateral instruments concerning special matters.

2 The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for the purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of the Convention, if it facilitates international co-operation.

4 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.

Article 53 – Declarations and reservations

1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more of the declaration provided for in Article 3, paragraph 2, Article 9, paragraph 4, Article 17, paragraph 5, Article 24, paragraph 3, Article 31, paragraph 2, Article 35, paragraphs 1 and 3 and Article 42, paragraph 2.

2 Any State or the European Community may also, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General, reserve its right not to apply, in part or in whole, the provisions of Article 7, paragraph 2, sub-paragraph c; Article 9, paragraph 6; Article 46, paragraph 5; and Article 47.

3 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare the manner in which it intends to apply Articles 17 and 19 of this Convention, particularly taking into account applicable international agreements in the field of international co-operation in criminal matters. It shall notify any changes in this information to the Secretary General of the Council of Europe.

4 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare:

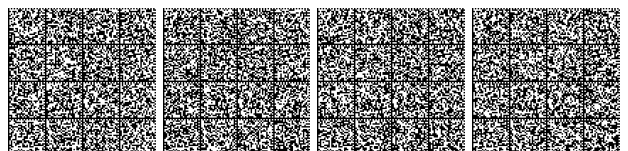
a that it will not apply Article 3, paragraph 4 of this Convention; or

b that it will apply Article 3, paragraph 4 of this Convention only partly; or

c the manner in which it intends to apply Article 3, paragraph 4 of this Convention.

It shall notify any changes in this information to the Secretary General of the Council of Europe.

5 No other reservation may be made.

6 Any Party which has made a reservation under this article may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

7 A Party which has made a reservation in respect of a provision of the Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 54 – Amendments

1 Amendments to the Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the European Community and to every non-member State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 50.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC) which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

6 In order to update the categories of offences contained in the appendix, as well as amend Article 13, amendments may be proposed by any Party or by the Committee of Ministers. They shall be communicated by the Secretary General of the Council of Europe to the Parties.

7 After having consulted the Parties which are not members of the Council of Europe and, if necessary the CDPC, the Committee of Ministers may adopt an amendment proposed in accordance with paragraph 6 by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Parties. During this period, any Party may notify the Secretary General of any objection to the entry into force of the amendment in its respect.

8 If one-third of the Parties notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.

9 If less than one-third of the Parties notifies an objection, the amendment shall enter into force for those Parties which have not notified an objection.

10 Once an amendment has entered into force in accordance with paragraphs 6 to 9 of this article and a Party has notified an objection to it, this amendment shall come into force in respect of the Party concerned on the first day of the month following the date on which it has notified the Secretary General of the Council of Europe of its acceptance. A Party which has made an objection may withdraw it at any time by notifying it to the Secretary General of the Council of Europe.

11 If an amendment has been adopted by the Committee of Ministers, a State or the European Community may not express their consent to be bound by the Convention, without accepting at the same time the amendment.

Article 55 – Denunciation

1 Any Party may, at any time, denounce the Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3 The present Convention shall, however, continue to apply to the enforcement under Article 23 of confiscation for which a request has been made in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

Article 56 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Community, the non-member States which have participated in the elaboration of the Convention, any State invited to accede to it and any other Party to the Convention of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of the Convention in accordance with Articles 49 and 50;

d any declaration or reservation made under Article 53;

e any other act, notification or communication relating to the Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Community, to the non-member States which have participated in the elaboration of the Convention and to any State invited to accede to it.

Appendix

a participation in an organised criminal group and racketeering;
b terrorism, including financing of terrorism;
c trafficking in human beings and migrant smuggling;
d sexual exploitation, including sexual exploitation of children;
e illicit trafficking in narcotic drugs and psychotropic substances;
f illicit arms trafficking;
g illicit trafficking in stolen and other goods;
h corruption and bribery;
i fraud;
j counterfeiting currency;
k counterfeiting and piracy of products;
l environmental crime;
m murder, grievous bodily injury;
n kidnapping, illegal restraint and hostage-taking;
o robbery or theft;
p smuggling;
q extortion;
r forgery;
s piracy; and
t insider trading and market manipulation.

Council of Europe Treaty Series – No. 217
Série des Traités du Conseil de l'Europe - n° 217

Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism

Protocole additionnel à la Convention du Conseil de l'Europe pour la prévention du terrorisme

Riga, 22.X.2015

Preamble

The member States of the Council of Europe and the other Parties to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), signatory to this Protocol,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Desiring to further strengthen the efforts to prevent and suppress terrorism in all its forms, both in Europe and globally, while respecting human rights and the rule of law;

Recalling human rights and fundamental freedoms enshrined, in particular, in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and its Protocols, as well as in the International Covenant on Civil and Political Rights;

Expressing their grave concern about the threat posed by persons travelling abroad for the purpose of committing, contributing to or participating in terrorist offences, or the providing or receiving of training for terrorism in the territory of another State;

Having regard in this respect to Resolution 2178 (2014) adopted by the United Nations Security Council at its 7272nd meeting, on 24 September 2014, in particular paragraphs 4 to 6 thereof;

Considering it desirable to supplement the Council of Europe Convention on the Prevention of Terrorism in certain respects,

Have agreed as follows:

Préambule

Les Etats membres du Conseil de l'Europe et les autres Parties à la Convention du Conseil de l'Europe pour la prévention du terrorisme (STCE n° 196), signataires du présent Protocole,

Considérant que le but du Conseil de l'Europe est de réaliser une union plus étroite entre ses membres ;

Désireux de renforcer davantage les efforts pour prévenir et réprimer le terrorisme sous toutes ses formes, aussi bien en Europe que dans le monde entier, tout en respectant les droits de l'homme et l'Etat de droit ;

Rappelant les droits de l'homme et les libertés fondamentales consacrés, notamment, dans la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (STE n° 5) et ses Protocoles, ainsi que dans le Pacte international relatif aux droits civils et politiques ;

Se déclarant gravement préoccupés par la menace posée par les personnes se rendant à l'étranger aux fins de commettre, de contribuer ou de participer à des infractions terroristes, ou de dispenser ou de recevoir un entraînement pour le terrorisme sur le territoire d'un autre Etat ;

Vu, à cet égard, la Résolution 2178 (2014) adoptée par le Conseil de sécurité des Nations Unies à sa 7272e séance, le 24 septembre 2014, et notamment ses paragraphes 4 à 6 ;

Jugeant souhaitable de compléter la Convention du Conseil de l'Europe pour la prévention du terrorisme à certains égards,

Sont convenus de ce qui suit :

Article 1 – Purpose

The purpose of this Protocol is to supplement the provisions of the Council of Europe Convention on the Prevention of Terrorism, opened for signature in Warsaw on 16 May 2005 (hereinafter referred to as "the Convention") as regards the criminalisation of the acts described in Articles 2 to 6 of this Protocol, thereby enhancing the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the Parties.

Article 2 – Participating in an association or group for the purpose of terrorism

1 For the purpose of this Protocol, "participating in an association or group for the purpose of terrorism" means to participate in the activities of an association or group for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or the group.

2 Each Party shall adopt such measures as may be necessary to establish "participating in an association or group for the purpose of terrorism", as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Article 3 – Receiving training for terrorism

1 For the purpose of this Protocol, "receiving training for terrorism" means to receive instruction, including obtaining knowledge or practical skills, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence.

2 Each Party shall adopt such measures as may be necessary to establish "receiving training for terrorism", as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Article 4 – Travelling abroad for the purpose of terrorism

1 For the purpose of this Protocol, "travelling abroad for the purpose of terrorism" means travelling to a State, which is not that of the traveller's nationality or residence, for the purpose of the commission of, contribution to or participation in a terrorist offence, or the providing or receiving of training for terrorism.

2 Each Party shall adopt such measures as may be necessary to establish "travelling abroad for the purpose of terrorism", as defined in paragraph 1, from its territory or by its nationals, when committed unlawfully and intentionally, as a criminal offence under its domestic law. In doing so, each Party may establish conditions required by and in line with its constitutional principles.

3 Each Party shall also adopt such measures as may be necessary to establish as a criminal offence under, and in accordance with, its domestic law the attempt to commit an offence as set forth in this article.

Article 1 – But

Le but du présent Protocole est de compléter les dispositions de la Convention du Conseil de l'Europe pour la prévention du terrorisme, ouverte à la signature à Varsovie le 16 mai 2005 (ci-après dénommée « la Convention ») eu égard à l'incrimination des actes décrits aux articles 2 à 6 du présent Protocole, améliorant ainsi les efforts des Parties dans la prévention du terrorisme et de ses effets négatifs sur la pleine jouissance des droits de l'homme, en particulier du droit à la vie, à la fois par des mesures à prendre au niveau national et dans le cadre de la coopération internationale, en tenant compte des traités ou des accords multilatéraux ou bilatéraux existants, applicables entre les Parties.

Article 2 – Participer à une association ou à un groupe à des fins de terrorisme

1 Aux fins du présent Protocole, on entend par « participer à une association ou à un groupe à des fins de terrorisme » le fait de participer aux activités d'une association ou d'un groupe afin de commettre ou de contribuer à la commission d'une ou de plusieurs infractions terroristes par l'association ou le groupe.

2 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait de « participer à une association ou à un groupe à des fins de terrorisme », tel que défini au paragraphe 1 lorsqu'il est commis illégalement et intentionnellement.

Article 3 – Recevoir un entraînement pour le terrorisme

1 Aux fins du présent Protocole, on entend par « recevoir un entraînement pour le terrorisme » le fait de recevoir des instructions, y compris le fait d'obtenir des connaissances ou des compétences pratiques, de la part d'une autre personne pour la fabrication ou l'utilisation d'explosifs, d'armes à feu ou d'autres armes ou substances nocives ou dangereuses, ou pour d'autres méthodes ou techniques spécifiques, afin de commettre une infraction terroriste ou de contribuer à sa commission.

2 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait de « recevoir un entraînement pour le terrorisme », tel que défini au paragraphe 1, lorsqu'il est commis illégalement et intentionnellement.

Article 4 – Se rendre à l'étranger à des fins de terrorisme

1 Aux fins du présent Protocole, on entend par « se rendre à l'étranger à des fins de terrorisme » le fait de se rendre vers un Etat, qui n'est pas celui de nationalité ou de résidence du voyageur, afin de commettre, de contribuer ou de participer à une infraction terroriste, ou afin de dispenser ou de recevoir un entraînement pour le terrorisme.

2 Chaque Partie adopte également les mesures qui s'avèrent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait de « se rendre à l'étranger à des fins de terrorisme », tel que défini au paragraphe 1, à partir de son territoire ou de la part de l'un de ses ressortissants, lorsqu'il est commis illégalement et intentionnellement. Ce faisant, chaque Partie peut établir des conditions exigées par et conformes à ses principes constitutionnels.

3 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale dans et conformément à son droit interne la tentative de commettre une infraction au sens de cet article.

Article 5 - Funding travelling abroad for the purpose of terrorism

1 For the purpose of this Protocol, "funding travelling abroad for the purpose of terrorism" means providing or collecting, by any means, directly or indirectly, funds fully or partially enabling any person to travel abroad for the purpose of terrorism, as defined in Article 4, paragraph 1, of this Protocol, knowing that the funds are fully or partially intended to be used for this purpose.

2 Each Party shall adopt such measures as may be necessary to establish the "funding of travelling abroad for the purpose of terrorism", as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Article 6 - Organising or otherwise facilitating travelling abroad for the purpose of terrorism

1 For the purpose of this Protocol, "organising or otherwise facilitating travelling abroad for the purpose of terrorism" means any act of organisation or facilitation that assists any person in travelling abroad for the purpose of terrorism, as defined in Article 4, paragraph 1, of this Protocol, knowing that the assistance thus rendered is for the purpose of terrorism.

2 Each Party shall adopt such measures as may be necessary to establish "organising or otherwise facilitating travelling abroad for the purpose of terrorism", as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Article 7 - Exchange of information

1 Without prejudice to Article 3, paragraph 2, sub-paragraph a, of the Convention and in accordance with its domestic law and existing international obligations, each Party shall take such measures as may be necessary in order to strengthen the timely exchange between Parties of any available relevant information concerning persons travelling abroad for the purpose of terrorism, as defined in Article 4. For that purpose, each Party shall designate a point of contact available on a 24-hour, seven-days-a-week basis.

2 A Party may choose to designate an already existing point of contact under paragraph 1.

3 A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.

Article 8 - Conditions and safeguards

1 Each Party shall ensure that the implementation of this Protocol, including the establishment, implementation and application of the criminalisation under Articles 2 to 6, is carried out while respecting human rights obligations, in particular the right to freedom of movement, freedom of expression, freedom of association and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and other obligations under international law.

2 The establishment, implementation and application of the criminalisation under Articles 2 to 6 of this Protocol should furthermore be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discriminatory or racist treatment.

Article 5 - Financer des voyages à l'étranger à des fins de terrorisme

1 Aux fins du présent Protocole, on entend par « financer des voyages à l'étranger à des fins de terrorisme » la fourniture ou la collecte, par quelque moyen que ce soit, directement ou indirectement, de fonds permettant totalement ou partiellement à toute personne de se rendre à l'étranger à des fins de terrorisme, tel que défini au paragraphe 1 de l'article 4 du présent Protocole, sachant que les fonds ont, totalement ou partiellement, pour but de servir ces fins.

2 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait de « financer des voyages à l'étranger à des fins de terrorisme », tel que défini au paragraphe 1, lorsqu'il est commis illégalement et intentionnellement.

Article 6 - Organiser ou faciliter par quelque autre manière des voyages à l'étranger à des fins de terrorisme

1 Aux fins du présent Protocole, on entend par « organiser ou faciliter par quelque autre manière des voyages à l'étranger à des fins de terrorisme » tout acte visant à organiser ou à faciliter le voyage à l'étranger à des fins de terrorisme de toute personne, tel que défini au paragraphe 1 de l'article 4 du présent Protocole, sachant que l'aide ainsi apportée l'est à des fins de terrorisme.

2 Chaque Partie adopte les mesures qui s'avèrent nécessaires pour ériger en infraction pénale, conformément à son droit interne, le fait d' « organiser ou de faciliter par quelque autre manière des voyages à l'étranger à des fins de terrorisme », tel que défini au paragraphe 1, lorsqu'il est commis illégalement et intentionnellement.

Article 7 - Echange d'informations

1 Sans préjudice de l'article 3, paragraphe 2, alinéa a, de la Convention et conformément à son droit interne et aux obligations internationales existantes, chaque Partie prend les mesures qui s'avèrent nécessaires pour renforcer l'échange rapide entre les Parties de toute information pertinente disponible concernant les personnes se rendant à l'étranger à des fins de terrorisme, telles que définies à l'article 4. A cette fin, chaque Partie désigne un point de contact disponible 24 heures sur 24, 7 jours sur 7.

2 Une Partie peut choisir de désigner un point de contact préexistant en vertu du paragraphe 1.

3 Le point de contact d'une Partie aura les moyens de correspondre avec le point de contact d'une autre Partie selon une procédure accélérée.

Article 8 - Conditions et sauvegardes

1 Chaque Partie doit s'assurer que la mise en œuvre du présent Protocole, y compris l'établissement, la mise en œuvre et l'application de l'incrimination visée aux articles 2 à 6, soit réalisée en respectant les obligations relatives aux droits de l'homme lui incombant, notamment la liberté de circulation, la liberté d'expression, la liberté d'association et la liberté de religion, telles qu'établies dans la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, dans le Pacte international relatif aux droits civils et politiques et d'autres obligations découlant du droit international, lorsqu'ils lui sont applicables.

2 L'établissement, la mise en œuvre et l'application de l'incrimination visée aux articles 2 à 6 du présent Protocole devraient en outre être subordonnés au principe de proportionnalité, eu égard aux buts légitimes poursuivis et à leur nécessité dans une société démocratique, et devraient exclure toute forme d'arbitraire, de traitement discriminatoire ou raciste.

Article 9 – Relation between this Protocol and the Convention

The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. As between the Parties, all the provisions of the Convention shall apply accordingly, with the exception of Article 9.

Article 10 – Signature and entry into force

1 This Protocol shall be open for signature by Signatories to the Convention. It shall be subject to ratification, acceptance or approval. A Signatory may not ratify, accept or approve this Protocol unless it has previously ratified, accepted or approved the Convention, or does so simultaneously. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the sixth instrument of ratification, acceptance or approval, including at least four member States of the Council of Europe.

3 In respect of any Signatory which subsequently deposits its instrument of ratification, acceptance or approval, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 11 – Accession to the Protocol

1 After the entry into force of this Protocol, any State, which has acceded to the Convention, may also accede to this Protocol or do so simultaneously.

2 In respect of any State acceding to the Protocol under paragraph 1 above, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 12 – Territorial application

1 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2 Any Party may, at any later time, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 9 – Relation entre le Protocole et la Convention

Les termes et expressions employés dans le présent Protocole doivent être interprétés au sens de la Convention. Pour les Parties, toutes les dispositions de la Convention s'appliquent en conséquence, à l'exception de l'article 9.

Article 10 – Signature et entrée en vigueur

1 Le présent Protocole est ouvert à la signature des Signataires de la Convention. Il est soumis à ratification, acceptation ou approbation. Un Signataire ne peut ratifier, accepter ou approuver le présent Protocole sans avoir antérieurement ou simultanément ratifié, accepté ou approuvé la Convention. Les instruments de ratification, d'acceptation ou d'approbation seront déposés près le Secrétaire Général du Conseil de l'Europe.

2 Le présent Protocole entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après le dépôt du sixième instrument de ratification, d'acceptation ou d'approbation, dont au moins quatre Etats membres du Conseil de l'Europe.

3 Pour tout Signataire qui déposera ultérieurement son instrument de ratification, d'acceptation ou d'approbation, le présent Protocole entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date du dépôt de l'instrument de ratification, d'acceptation ou d'approbation.

Article 11 – Adhésion au Protocole

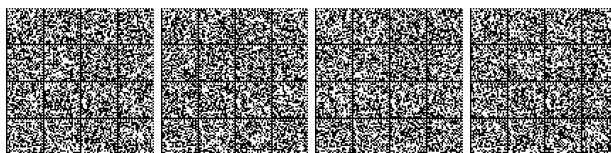
1 Après l'entrée en vigueur du présent Protocole, tout Etat, qui a adhéré à la Convention, pourra également adhérer au présent Protocole ou le faire simultanément.

2 Pour tout Etat adhérant au Protocole conformément au paragraphe 1 ci-dessus, le Protocole entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de dépôt de l'instrument d'adhésion près le Secrétaire Général du Conseil de l'Europe.

Article 12 – Application territoriale

1 Tout Etat ou l'Union européenne peut, au moment de la signature ou au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, désigner le ou les territoires auxquels le présent Protocole s'applique.

2 Toute Partie peut, à tout moment ultérieur, par une déclaration adressée au Secrétaire Général du Conseil de l'Europe, étendre l'application du présent Protocole à tout autre territoire désigné dans cette déclaration. Le Protocole entrera en vigueur à l'égard de ce territoire le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de réception de la déclaration par le Secrétaire Général.

3 Toute déclaration faite en application des deux paragraphes précédents peut être retirée, en ce qui concerne tout territoire désigné dans cette déclaration, par notification adressée au Secrétaire Général du Conseil de l'Europe. Le retrait prendra effet le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de réception de la notification par le Secrétaire Général.

Article 13 – Denunciation

1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General of the Council of Europe.

3 Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 14 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Union, the non-member States which have participated in the elaboration of this Protocol as well as any State which has acceded to, or has been invited to accede to, this Protocol of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Protocol in accordance with Articles 10 and 11;

d any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Riga, this 22nd day of October 2015, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Union, to the non-member States which have participated in the elaboration of this Protocol, and to any State invited to accede to it.

Article 13 – Dénonciation

1 Toute Partie peut, à tout moment, dénoncer le présent Protocole en adressant une notification au Secrétaire Général du Conseil de l'Europe.

2 La dénonciation prendra effet le premier jour du mois qui suit l'expiration d'une période de trois mois après la date de réception de la notification par le Secrétaire Général du Conseil de l'Europe.

3 La dénonciation de la Convention entraînera automatiquement la dénonciation du présent Protocole.

Article 14 – Notifications

Le Secrétaire Général du Conseil de l'Europe notifie aux Etats membres du Conseil de l'Europe, l'Union européenne, aux Etats non membres ayant participé à l'élaboration du présent Protocole, ainsi qu'à tout Etat y ayant adhéré ou ayant été invité à y adhérer :

a toute signature ;

b le dépôt de tout instrument de ratification, d'acceptation, d'approbation ou d'adhésion ;

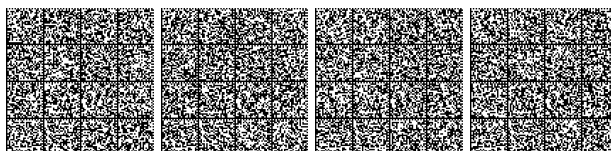
c toute date d'entrée en vigueur du présent Protocole conformément aux articles 10 et 11 ;

d tout autre acte, déclaration, notification ou communication ayant trait au présent Protocole.

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé le présent Protocole.

Fait à Riga, le 22 octobre 2015, en français et en anglais, les deux textes faisant également foi, en un seul exemplaire qui est déposé dans les archives du Conseil de l'Europe. Le Secrétaire Général du Conseil de l'Europe en communiquera copie certifiée conforme à chacun des Etats membres du Conseil de l'Europe, à l'Union européenne, aux Etats non membres ayant participé à l'élaboration du Protocole et à tout Etat invité à y adhérer.

ADDITIONAL PROTOCOL TO THE COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM

PROTOCOLE ADDITIONNEL À LA CONVENTION DU CONSEIL DE L'EUROPE POUR LA PRÉVENTION DU TERRORISME

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

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For the Government of the Republic of Albania:

Pour le Gouvernement de la République d'Albanie :

For the Government of the Principality of Andorra:

Pour le Gouvernement de la Principauté d'Andorre :

LAVORI PREPARATORI

Camera dei deputati (atto n. 3303):

Presentato dal Ministro degli affari esteri e della cooperazione internazionale (Gentiloni Silveri), dal Ministro dell'interno (Alfano) e dal Ministro della giustizia (Orlando), in data 10 settembre 2015.

Assegnato alle commissioni riunite II (Giustizia) e III (Affari esteri e comunitari), in sede referente, il 23 settembre 2015, con pareri delle Commissioni I (Affari costituzionali), IV (Difesa), V (Bilancio), VI (Finanze), VIII (Ambiente, territorio e lavori pubblici), X (Attività produttive, commercio e turismo), XII (Affari sociali) e XIV (Politiche dell'Unione europea).

Esaminato dalle commissioni riunite II (Giustizia) e III (Affari esteri e comunitari), in sede referente, il 5 e 18 novembre 2015; il 2 e 17 dicembre 2015.

Esaminato in aula il 25 gennaio 2016 ed approvato, con modificazioni, il 28 gennaio 2016.

Senato della Repubblica (atto n. 2223):

Assegnato alle commissioni riunite 2ª (Giustizia) e 3ª (Affari esteri, emigrazione), in sede referente, il 9 febbraio 2016, con pareri delle commissioni 1ª (Affari costituzionali), 4ª (Difesa), 5ª (Bilancio), 6ª (Finanze e tesoro), 10ª (Industria, commercio, turismo) 12ª (Igiene e sanità), 13ª (Territorio, ambiente, beni ambientali) e 14ª (Politiche dell'Unione europea).

Esaminato dalle commissioni riunite 2ª (Giustizia) e 3ª (Affari esteri, emigrazione), in sede referente, il 5 e 19 aprile 2016; il 12 maggio 2016.

Esaminato in aula il 18 maggio 2016; il 22, 23 giugno 2016 ed approvato, con modificazioni, il 28 giugno 2016.

Camera dei deputati (atto n. 3303-B):

Assegnato alle commissioni riunite II (Giustizia) e III (Affari esteri e comunitari), in sede referente, il 5 luglio, con pareri delle Commissioni I (Affari costituzionali) e VIII (Ambiente, territorio e lavori pubblici).

Esaminato dalle commissioni riunite II (Giustizia) e III (Affari esteri e comunitari), in sede referente, il 7 e 13 luglio 2016.

Esaminato in aula il 15 luglio 2016 ed approvato definitivamente il 19 luglio 2016.

NOTE

Avvertenza:

Il testo delle note qui pubblicato è stato redatto dall'amministrazione competente per materia, ai sensi dell'art. 10, commi 2 e 3, del testo unico delle disposizioni sulla promulgazione delle leggi, sull'emanazione dei decreti del Presidente della Repubblica e sulle pubblicazioni ufficiali della Repubblica italiana, approvato con decreto del Presidente della Repubblica 28 dicembre 1985, n. 1092, al solo fine di facilitare la lettura delle disposizioni di legge alle quali è operato il rinvio. Restano invariati il valore e l'efficacia degli atti legislativi qui trascritti.

Per le direttive CEE vengono forniti gli estremi di pubblicazione nella *Gazzetta Ufficiale* delle Comunità europee (GUCE).

Note all'art. 3:

— Si riporta il testo dell'art. 6 del decreto legislativo 4 marzo 2014, n. 45 (Attuazione della direttiva 2011/70/EURATOM, che istituisce un quadro comunitario per la gestione responsabile e sicura del combustibile nucleare esaurito e dei rifiuti radioattivi):

«Art. 6 *(Autorità di regolamentazione competente)*. — 1. L'autorità di regolamentazione competente in materia di sicurezza nucleare e di radioprotezione è l'Ispettorato nazionale per la sicurezza nucleare e la radioprotezione (ISIN).

2. L'ISIN svolge le funzioni e i compiti di autorità nazionale per la regolamentazione tecnica espletando le istruttorie connesse ai processi autorizzativi, le valutazioni tecniche, il controllo e la vigilanza delle installazioni nucleari non più in esercizio e in disattivazioni, dei reattori di ricerca, degli impianti e delle attività connesse alla gestione dei rifiuti radioattivi e del combustibile nucleare esaurito, delle materie nucleari, della protezione fisica passiva delle materie e delle installazioni nucleari, delle attività d'impiego delle sorgenti di radiazioni ionizzanti e di trasporto delle materie radioattive emanando altresì le certificazioni previste dalla normativa vigente in tema di trasporto di materie radioattive stesse. Emana guide tecniche e fornisce supporto ai ministeri competenti nell'elaborazione di atti di rango legislativo nelle materie di competenza. Fornisce supporto tecnico alle autorità di protezione civile nel campo della pianificazione e della risposta alle emergenze radiologiche e nucleari, svolge le attività di controllo della radioattività ambientale previste dalla normativa vigente ed assicura gli adempimenti dello Stato italiano agli obblighi derivanti dagli accordi internazionali sulle salvaguardie. L'ISIN assicura la rappresentanza dello Stato italiano nell'ambito delle attività svolte dalle organizzazioni internazionali e dall'Unione europea nelle materie di competenza e la partecipazione ai processi internazionali e comunitari di valutazione della sicurezza nucleare degli impianti nucleari e delle attività di gestione del combustibile irraggiato e dei rifiuti radioattivi in altri paesi.

3. Sono organi dell'ISIN il direttore e la Consulta che durano in carica sette anni, non rinnovabili.

4. Il direttore dell'ISIN è nominato entro 90 giorni dall'entrata in vigore del presente decreto, con decreto del Presidente della Repubblica, previa deliberazione del Consiglio dei ministri da adottarsi su proposta del Ministro dell'ambiente e della tutela del territorio e del mare, di concerto con il Ministro dello sviluppo economico, acquisiti i pareri favorevoli delle Commissioni parlamentari competenti. In nessun caso la nomina potrà essere effettuata in caso di mancanza del predetto parere espresso, a maggioranza assoluta dei componenti, dalle predette Commissioni, entro trenta giorni dalla richiesta. Il Direttore:

a) ha la rappresentanza legale dell'ISIN;

b) svolge le funzioni di direzione, coordinamento e controllo della struttura;

c) definisce le linee strategiche e gli obiettivi operativi dell'ISIN;

d) definisce le procedure organizzative interne e le tempistiche di riferimento per l'elaborazione degli atti e dei pareri di spettanza dell'ISIN;

e) emana le tariffe da applicare agli operatori ai sensi del comma 18 del presente articolo per lo svolgimento dei servizi dell'ISIN;

f) emana i pareri vincolanti richiesti alla struttura nell'ambito di istruttorie autorizzative condotte dalle amministrazioni pubbliche e gli atti di approvazione su istanza degli operatori;

g) svolge il ruolo di rappresentanza per le materie di competenza nei consessi comunitari e internazionali;

h) trasmette al Governo e al Parlamento una relazione annuale sulle attività svolte dall'ISIN e sullo stato della sicurezza nucleare nel territorio nazionale.

5. Il Direttore è scelto tra persone di indiscussa moralità e indipendenza, di comprovata e documentata esperienza e professionalità ed elevata qualificazione e competenza nei settori della sicurezza nucleare, della radioprotezione, della tutela dell'ambiente e sulla valutazione di progetti complessi e di difesa contro gli eventi estremi naturali o incidentali. Per almeno dodici mesi dalla cessazione dell'incarico, il Direttore non può intrattenere, direttamente o indirettamente, rapporti di collaborazione, di consulenza o di impiego con le imprese operanti nel settore di competenza, né con le relative associazioni. La violazione di tale divieto è punita, salvo che il fatto costituisca reato, con una sanzione amministrativa pecuniaria pari ad una annualità dell'importo del corrispettivo percepito. All'imprenditore e all'associazione che abbiano violato tale divieto si applica la sanzione amministrativa pecuniaria pari allo 0,5 per cento del fatturato e, comunque, non inferiore a euro 150.000 e non superiore ad euro 10 milioni, e, nei casi più gravi o quando il comportamento illecito sia stato reiterato, la revoca dell'atto autorizzativo inerente all'attività illecitamente condotta ai sensi del presente comma. I limiti massimo e minimo di tale sanzione sono rivalutati secondo il tasso di variazione annuo dell'indice dei prezzi al consumo per le famiglie di operai e impiegati rilevato dall'ISTAT.

6. La Consulta è costituita da 3 esperti, di cui uno con funzioni di coordinamento organizzativo interno alla medesima, scelti tra persone di indiscussa moralità e indipendenza, di comprovata e documentata esperienza e professionalità ed elevata qualificazione e competenza nei settori della sicurezza nucleare, della radioprotezione, della tutela dell'ambiente e sulla valutazione di progetti complessi e di difesa contro gli eventi estremi naturali o incidentali. I componenti della Consulta sono nominati entro 90 giorni dall'entrata in vigore del presente decreto, con decreto del Presidente della Repubblica, previa deliberazione del

Consiglio dei ministri da adottarsi su proposta del Ministro dell'ambiente e della tutela del territorio e del mare, di concerto con il Ministro dello sviluppo economico, acquisiti i pareri favorevoli delle Commissioni parlamentari competenti. In nessun caso le nomine potranno essere effettuate in caso di mancanza del predetto parere espresso, a maggioranza assoluta dei componenti, dalle predette Commissioni, entro trenta giorni dalla richiesta. La Consulta esprime parere obbligatorio:

a) sui piani di attività, sugli atti programmatici e sugli obiettivi operativi nonché sulle tariffe da applicare agli operatori;

b) in merito alle procedure operative e ai regolamenti interni dell'ISIN;

c) sulle proposte di guide tecniche predisposte dall'ISIN.

7. Il trattamento economico del direttore e dei componenti della Consulta è determinato con decreto del Ministro dello sviluppo economico e del Ministro dell'ambiente e della tutela del territorio e del mare, di concerto con il Ministro dell'economia e delle finanze. Gli oneri derivanti dall'attuazione del presente comma sono coperti con le risorse disponibili ai sensi dei commi 15 e 17 del presente articolo.

8. L'ISIN è dotato di risorse di personale di provata competenza tecnica nelle specifiche aree di pertinenza dell'Ispettorato, nel limite massimo di 60 unità. Le risorse sono costituite dall'organico del Dipartimento nucleare, rischio tecnologico e industriale dell'ISPRA, da altro personale ISPRA e da risorse provenienti da altre pubbliche amministrazioni ed enti di ricerca. Il personale non proveniente da ISPRA è collocato all'ISIN in posizione di comando e conserverà il trattamento giuridico ed economico in godimento presso l'amministrazione o l'ente di appartenenza. Al personale posto in posizione di comando si applica quanto previsto all'articolo 70, comma 12, del decreto legislativo 30 marzo 2001, n. 165.

9. Non può essere nominato direttore, né componente della Consulta né può far parte dell'ISIN colui che esercita, direttamente o indirettamente, attività professionale o di consulenza, è amministratore o dipendente di soggetti privati operanti nel settore, ricopre incarichi elettivi o di rappresentanza nei partiti politici, ha interessi diretti o indiretti nelle imprese operanti nel settore, o ricadenti nei casi di incompatibilità e inconferibilità degli incarichi presso le pubbliche amministrazioni e presso gli enti privati in controllo pubblico ai sensi del decreto legislativo 8 aprile 2013, n. 39, e successive modificazioni.

10. Il direttore e i componenti della Consulta decadono dall'incarico al venir meno dei requisiti di cui al comma 9, accertato con decreto del Presidente della Repubblica, previa deliberazione del Consiglio dei ministri da adottarsi su proposta del Ministro dell'ambiente e della tutela del territorio e del mare, di concerto con il Ministro dello sviluppo economico, acquisiti i pareri favorevoli delle Commissioni parlamentari competenti. Per il personale dell'ISIN, il venir meno dei suddetti requisiti costituisce causa di decadenza dall'incarico.

11. L'ISIN ha autonomia regolamentare, gestionale e amministrativa ed è responsabile della sicurezza nucleare e della radioprotezione sul territorio nazionale.

12. Entro 60 giorni dalla data di nomina del direttore dell'ISIN, l'ISPRA effettua una riorganizzazione interna dei propri uffici che assicuri alla struttura di cui al comma 1, con modalità regolamentate da apposita convenzione non onerosa, condizioni di operatività in base ai seguenti principi e requisiti:

a) autonomia gestionale ed organizzativa ai fini dello svolgimento delle attività ad essa demandate;

b) adozione del regime di separazione funzionale e amministrativa;

c) dotazione di servizi e di strutture adeguate;

d) fornitura di supporto per la gestione amministrativa del personale e delle procedure per l'acquisizione di beni e servizi con modalità separate rispetto all'ISPRA.

13. Per lo svolgimento dei propri compiti, l'ISIN può avvalersi, previa la stipula di apposite convenzioni, dell'ISPRA e delle Agenzie provinciali e regionali per la protezione dell'ambiente a fini di supporto tecnico scientifico e di organizzazioni che soddisfino i principi di trasparenza e indipendenza da soggetti coinvolti nella promozione o nella gestione di attività in campo nucleare.

14. Entro 90 giorni dalla data di nomina di cui al comma 4 del presente articolo, il direttore dell'ISIN trasmette al Ministro dell'ambiente e della tutela del territorio e del mare e al Ministro dello sviluppo economico, affinché possano formulare entro 30 giorni le proprie osservazioni, il regolamento che definisce l'organizzazione e il funzionamento interni dell'Ispettorato.

15. I mezzi finanziari dell'ISIN sono costituiti, per l'avvio della sua ordinaria attività, dalle risorse finanziarie disponibili a legislazione vigente, già destinate all'avvio delle attività di cui all'articolo 29, comma 17, della legge 23 luglio 2009, n. 99, ai sensi dell'art. 1, comma 1, lettera *c)*, del decreto del Ministro dello sviluppo economico 15 febbraio 2011, di concerto con il Ministro dell'economia e delle finanze e con il Ministro dell'ambiente e della tutela del territorio e del mare, pubblicato nella *Gazzetta Ufficiale* n. 105 del 7 maggio 2011, dalle risorse finanziarie attualmente assegnate al Dipartimento nucleare, rischio tecnologico e industriale dell'ISPRA, e dalle risorse derivanti dai diritti che l'ISIN stesso è autorizzato ad applicare e introitare di cui al comma 17 del presente articolo. Le risorse finanziarie già disponibili a legislazione vigente, di cui all'art. 1, comma 1, lettera *c)*, del citato decreto ministeriale 15 febbraio 2011, sono quelle successivamente riassegnate dal Ministero dello sviluppo economico all'ISPRA nella misura di 1.205.000,00 euro.

16. Il bilancio preventivo e il conto consuntivo dell'ISIN costituiscono conti separati allegati ai corrispondenti documenti contabili dell'ISPRA. Il Collegio dei revisori dei conti dell'ISPRA, svolge sull'ISIN i compiti previsti dall'articolo 20 del decreto legislativo 30 giugno 2011, n. 123.

17. Per l'esercizio delle attività connesse ai compiti ed alle funzioni dell'ISIN, gli esercenti interessati sono tenuti al versamento di un corrispettivo da determinare, sulla base dei costi effettivamente sostenuti per l'effettuazione dei servizi. L'ISIN stabilisce il sistema da applicare alla determinazione dei diritti ispirandosi a principi di trasparenza, efficienza ed efficacia e dandone pubblicazione sul proprio sito web. Le determinazioni del direttore con le quali sono fissati gli importi, i termini e le modalità di versamento dei diritti sono approvate con decreto del Ministro dell'ambiente e della tutela del territorio e del mare e del Ministro dello sviluppo economico, di concerto con il Ministro dell'economia e delle finanze.

18. L'ISIN assicura, attraverso idonei strumenti di formazione e aggiornamento, il mantenimento e lo sviluppo delle competenze in materia di sicurezza nucleare e di radioprotezione del proprio personale attribuendo altresì a quest'ultimo la possibilità di seguire, ove necessario, specifici programmi di formazione, per contemplare le esigenze del Programma nazionale di cui all'art. 7 per la gestione del combustibile esaurito e dei rifiuti radioattivi.

19. Per l'esercizio delle proprie funzioni ispettive, l'ISIN si avvale di propri ispettori che operano ai sensi dell'articolo 10, commi 3, 4 e 5, del decreto legislativo 17 marzo 1995, n. 230.

20. Alla istituzione dell'ISIN si provvede nell'ambito delle risorse umane, strumentali e finanziarie previste a legislazione vigente senza nuovi o maggiori oneri a carico della finanza pubblica.».

Note all'art. 5:

— Si riporta il testo dell'art. 8, comma 2, lettera *a)*, del decreto-legge 18 febbraio 2015, n. 7, convertito, con modificazioni, dalla legge 17 aprile 2015, n. 43 (Misure urgenti per il contrasto del terrorismo, anche di matrice internazionale, nonché proroga delle missioni internazionali delle Forze armate e di polizia, iniziative di cooperazione allo sviluppo e sostegno ai processi di ricostruzione e partecipazione alle iniziative delle Organizzazioni internazionali per il consolidamento dei processi di pace e di stabilizzazione), come modificato dalla presente legge:

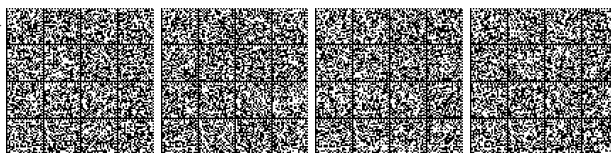
«Art. 8 *(Disposizioni in materia di garanzie funzionali e di tutela, anche processuale, del personale e delle strutture dei servizi di informazione per la sicurezza)*. — (*Omissis*).

2. Fino al 31 gennaio 2018:

a) non possono essere autorizzate, ai sensi dell'art. 18 della legge 3 agosto 2007, n. 124, condotte previste dalla legge come reato per le quali non è opponibile il segreto di Stato a norma dell'art. 39, comma 11, della medesima legge n. 124 del 2007, ad eccezione delle fattispecie di cui agli articoli 270, secondo comma, 270-*ter*, 270-*quater*, 270-*quater*.1, 270-*quinquies*, *270*-quinquies.*1,* 302, 306, secondo comma, e 414, quarto comma, del codice penale;

(*Omissis*).».

Note all'art. 7:

— Il decreto legislativo 6 febbraio 2007, n. 52 (Attuazione della direttiva 2003/122/CE Euratom sul controllo delle sorgenti radioattive sigillate ad alta attività e delle sorgenti orfane), è pubblicato nella *Gazzetta Ufficiale* 24 aprile 2007, n. 95.

Note all'art. 8:

— Il decreto legislativo 17 marzo 1995, n. 230 (Attuazione delle direttive 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 2006/117/Euratom in materia di radiazioni ionizzanti, 2009/71/Euratom in materia di sicurezza nucleare degli impianti nucleari e 2011/70/Euratom in materia di gestione sicura del combustibile esaurito e dei rifiuti radioattivi derivanti da attività civili), modificato dalla presente legge, è pubblicato nella *Gazzetta Ufficiale* 13 giugno 1995, n. 136, S.O.

Note all'art. 9:

— Si riporta il testo dell'art. 6 del decreto legislativo 21 novembre 2007, n. 231 (Attuazione della direttiva 2005/60/CE concernente la prevenzione dell'utilizzo del sistema finanziario a scopo di riciclaggio dei proventi di attività criminose e di finanziamento del terrorismo nonché della direttiva 2006/70/CE che ne reca misure di esecuzione):

«Art. 6 *(Unità di informazione finanziaria)*. — 1. Presso la Banca d'Italia è istituita l'Unità di informazione finanziaria per l'Italia (UIF).

2. La UIF esercita le proprie funzioni in piena autonomia e indipendenza. In attuazione di tali principi la Banca d'Italia disciplina con regolamento l'organizzazione e il funzionamento della UIF, ivi compresa la riservatezza delle informazioni acquisite. La Banca d'Italia attribuisce alla UIF mezzi finanziari e risorse idonei ad assicurare l'efficace perseguimento dei suoi fini istituzionali.

3. Il Direttore della UIF, al quale compete in autonomia la responsabilità della gestione, è nominato con provvedimento del Direttorio della Banca d'Italia, su proposta del Governatore della medesima Banca d'Italia, tra persone dotate di adeguati requisiti di onorabilità, professionalità e conoscenza del sistema finanziario. Il mandato ha la durata di cinque anni ed è rinnovabile una sola volta.

4. Per l'efficace svolgimento dei compiti fissati dalla legge e dagli obblighi internazionali, presso la UIF è costituito un Comitato di esperti del quale fanno parte il Direttore e quattro membri, dotati di adeguati requisiti di onorabilità e professionalità. I membri del Comitato sono nominati, nel rispetto del principio dell'equilibrio di genere, con decreto del Ministro dell'economia e delle finanze, sentito il Governatore della Banca d'Italia, e restano in carica tre anni, rinnovabili per altri tre. La partecipazione al Comitato non dà luogo a compensi, né a rimborso spese. Il Comitato è convocato dal Direttore della UIF con cadenza almeno semestrale. Esso cura la redazione di un parere sull'azione dell'UIF che forma parte integrante della documentazione trasmessa al Parlamento ai sensi del comma 5.

5. Entro il 30 maggio di ogni anno il Direttore della UIF trasmette al Ministro dell'economia e delle finanze, per il successivo inoltro al Parlamento, un rapporto sull'attività svolta, unitamente a una relazione della Banca d'Italia in merito ai mezzi finanziari e alle risorse attribuite alla UIF.

6. La UIF svolge le seguenti attività:

a) analizza i flussi finanziari al fine di individuare e prevenire fenomeni di riciclaggio di denaro o di finanziamento del terrorismo;

b) riceve le segnalazioni di operazioni sospette di cui all'art. 41 e ne effettua l'analisi finanziaria;

c) acquisisce ulteriori dati e informazioni, finalizzati allo svolgimento delle proprie funzioni istituzionali, presso i soggetti tenuti alle segnalazioni di operazioni sospette di cui all'art. 41;

d) riceve le comunicazioni dei dati aggregati di cui all'art. 40;

e) si avvale dei dati contenuti nell'anagrafe dei conti e dei depositi di cui all'art. 20, comma 4, della legge 30 dicembre 1991, n. 413, e nell'anagrafe tributaria di cui all'art. 37 del decreto-legge 4 luglio 2006, n. 223, convertito, con modificazioni, dalla legge 4 agosto 2006, n. 248;

e-*bis*) in materia di segnalazione di operazioni sospette, emana istruzioni da pubblicarsi nella *Gazzetta Ufficiale* della Repubblica italiana sui dati e le informazioni che devono essere contenuti nelle segnalazioni di cui all'art. 41.

7. La UIF, avvalendosi delle informazioni raccolte nello svolgimento delle proprie attività:

a) svolge analisi e studi su singole anomalie, riferibili a ipotesi di riciclaggio o di finanziamento del terrorismo, su specifici settori dell'economia ritenuti a rischio, su categorie di strumenti di pagamento e su specifiche realtà economiche territoriali;

b) elabora e diffonde modelli e schemi rappresentativi di comportamenti anomali sul piano economico e finanziario riferibili a possibili attività di riciclaggio o di finanziamento del terrorismo;

c) può sospendere, anche su richiesta del Nucleo speciale di polizia valutaria della Guardia di finanza, della DIA e dell'autorità giudiziaria, per un massimo di cinque giorni lavorativi, sempre che ciò non pregiudichi il corso delle indagini, operazioni sospette di riciclaggio o di finanziamento del terrorismo, dandone immediata notizia a tali organi.

7-*bis*. Alla UIF e al personale addetto si applica l'art. 24, comma 6-*bis*, della legge 28 dicembre 2005, n. 262.».

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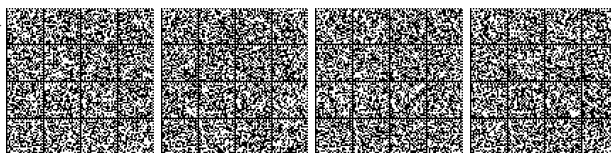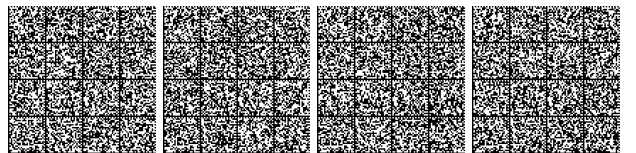
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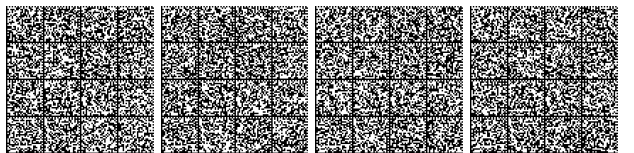
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